REACHING JUST SETTLEMENTS

Land Claims in British Columbia

Edited by Frank Cassidy

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Proceedings of a Conference held
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Edited by

Frank Cassidy

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Contents

Foreword ix

Preface xi

1: INTRODUCTION 1

Sammy Sam
Tribal Elder
First Nations of South Island Tribal Council 1

Andy Thomas
Chief
Esquimalt Nation 1

Tom Sampson
Chairman
First Nations of South Island Tribal Council 2

Frank Cassidy
Associate Professor, University of Victoria
and Research Associate, Institute for Research on Public Policy 3

Murray Coolican
Vice-President, Government Relations
National Sea Products, Halifax 4

2: DEFINING THE ISSUES, ESTABLISHING THE FACTS 10

Len Fox
Mayor
District of Vanderhoof 10

Ken Georgetti
President
B.C. Federation of Labour 12

Joe Mathias
Chief Councillor
Squamish Nation 14

Tom Waterland
President and Chief Executive Officer
Mining Association of British Columbia 17

George Watts
Chairman
Nuu-chah-nulth Tribal Council 21

3: THE HISTORICAL AND LEGAL DIMENSIONS 27

Paul Tennant
Professor, Department of Political Science
University of British Columbia 27

Jack Woodward
Lawyer
Jack Woodward Barristers and Solicitors 33

4: EMERGING TRENDS: ARE SETTLEMENTS IN REACH? 41

Frank Calder
President Emeritus
Nisga'a Tribal Council 41

Miles Richardson
President
Haida Tribal Society 48

Don Ryan
Speaker on behalf of the Office of the
Gitksan Wet'suwet'en Hereditary Chiefs 52

Tom Sampson
Chairman
First Nations of South Island Tribal Council 57

5: WHAT CAN THE FEDERAL AND PROVINCIAL GOVERNMENTS DO? 60

Frank Cassidy 60

Chris Knight
Chief Negotiator, Land Claims Secretariat
Yukon Territorial Government 66

6: THE NEXT THREE YEARS 70

Ed John
Barrister and Solicitor 70

Joanne Monaghan
Alderman
Kitimat 73

Jim Matkin
President
Business Council of British Columbia 75

Cliff Andstein
Director of Contract and Resource Services
British Columbia Government Employees' Union 79

Sophie Pierre
Area Coordinator
Kootenay Indian Area Council 82

7: CONCLUDING COMMENTS 86

Frank Cassidy 86

Appendices 89

1. Premier's Council on Native Affairs
Progress Report and Interim Recommendations 89

2. First Nations Congress Response 101

3. The New Democratic Party Land Claims Policy 105
4. The Federal Government's Comprehensive Land Claims Policy 116
5. Prime Minister Brian Mulroney on Canada's Indian Policy 129
6. A Third Party Perspective: The Forest Industry 136

Foreword

The conference "Reaching Just Settlements" held in Victoria in February 1990 had as its goal a constructive dialogue between aboriginal peoples and other Canadians on the aboriginal land question. The conference brought together representatives of First Nations, resource industries, labour, municipalities, and environmental groups to search for the common ground among the many different interests in the land claims debate in British Columbia.

The conference confirmed the urgency of the need to seek practical solutions to land-related issues, in tandem with progress on the broader constitutional questions of inherent jurisdiction and aboriginal rights. Arrangements for the co-management of resources can be worked out; indeed, the traditional special relationship of First Nations to the land and its wealth may well have much to teach non-natives about sound resource management. Contractual arrangements of various kinds can reconcile, in a practical manner, the differing interests of all the parties, and thus lend much greater certainty to the process of sustainable economic development.

Since this conference was held, several important developments have brought these issues even more into the public policy spotlight. The reversal of the B.C. government's long-standing position regarding the negotiation of land claims, and the recently announced federal government initiative to address more urgently issues of concern to First Nations give new momentum to efforts to resolve this matter of fundamental importance to all Canadians—the settlement, with justice and equity, of the outstanding land claims of aboriginal peoples in British Columbia. Some supplementary papers released after the conference are included with this volume as background to the current discussions.

It is fascinating and encouraging that events now have moved so far so quickly in the relatively brief time since the exchange of views reported here. The Institute hopes that the papers collected in this volume will provide useful background and valuable insights for those engaged in this historic search.

Rod Dobell
President
Institute for Research on Public Policy
November 1990

Preface

by Frank Cassidy

In August, 1990, Premier Bill Vander Zalm announced that the Government of British Columbia would "move quickly to establish a process to assist the Government of Canada in its responsibilities to negotiate and settle outstanding land claims in B.C." The Premier expressed a strong concern that there be a "just settlement of Indian land claims." In the wake of this statement, B.C.'s Native Affairs Minister Jack Weisgerber announced the establishment of a new Claims Registry to receive land claims proposals and a new Claims Negotiations Office in his Ministry. He also announced that the Premier would host a conference of "ail chiefs, tribal council leaders, and provincial Indian leaders." This conference took place a few months later.

Many British Columbians thought that the provincial government's initiative was a welcome, if long overdue, one. For most, it was also a surprise, given the province's long established position that Indian claims are not legitimate. The Vander Zalm announcement did not take place in a vacuum, however. It was a direct response to the July, 1990, recommendations of the Premier's Council on Native Affairs, a response that was undoubtedly hastened by the events of a summer scarred by the events at Oka and punctuated by numerous roadblocks and other forms of direct action across British Columbia.

More broadly, the aboriginal land question is one that has deep roots in the history of British Columbia. For well over one hundred years, aboriginal peoples have been putting forward their claims to the land and asserting their right to govern themselves. Since the early 1970s, their efforts to do so have become increasingly organized and public. In 1973, the Nisga'a of the Nass Valley in northwestern British Columbia brought many years of protest to a head as they caused the Supreme Court, in the *Calder v. Attorney General of British Columbia* decision, to make a landmark ruling on aboriginal title.

In succeeding years, many aboriginal peoples accelerated their efforts to put forward their claims. In 1980, for example, the Nuu-chah-nulth people declared that:

> We, the Nuu-chah-nulth, are the rightful, legal, and sovereign occupants and users of the lands and waters . . . [on] the west coast of Vancouver Island, adjacent islands and surrounding waters. For many thousands of years, without break we have traditionally occupied and used these lands and waters to sustain our way of life. Our aboriginal interest in these territories and their natural resources have never been extinguished by treaty or superseded by law.

In 1984, the hereditary chiefs of the Gitksan and Wet'suwet'en peoples brought their claim over a large portion of northwestern British Columbia to the courts in an action which will quite possibly produce, sometime in the 1990s, a significant Supreme Court of Canada decision on aboriginal title and jurisdiction. In their opening statement, the chiefs noted that this case offers the courts "an historic opportunity . . . to render judgement that will move Canada closer to the achievement of a true Confederation which includes its founding Indian nations."

In the final years of the 1980s, legal actions such as that of the Gitksan-Wet'suwet'en and judicial decisions such as the one in the *Sparrow* case, where the Supreme Court of Canada found that an aboriginal right to fish is clearly entrenched in Section 35 of the Constitution, continued to push the federal and provincial governments to move, at long last, on the aboriginal land question. By the summer of 1990, pressure had been building with new and previously unattained intensity upon both the federal and provincial governments to do something about the aboriginal land question. Industry and other interests were pointing to the increasing uncertainty brought about by unanswered claims. The courts were gradually expanding the recognized view of aboriginal rights. Indian peoples, labour unions, scholars, church groups, and many other British Columbians were calling for a just response to the articulated concerns of First Nations across British Columbia about their title to the land and rights in relation to its use and governance.

It was in this context that the conference "Reaching Just Settlements" took place in February, 1990. Sponsored by the University of Victoria, in cooperation with the Centre for Indian Training and Research and the Institute for Research on Public Policy, this conference was intended to provide an opportunity for many of those who are most directly touched by the aboriginal land question to speak about their views on the matter, hear the views of others, and clarify the issues. On this basis, it was hoped that the possibilities for just settlements would be illuminated.

Over three hundred people from every part of Canada and several other countries took part in the conference. Many aboriginal leaders did so, including Clarence Apsassin from the Treaty 8 Tribal Council, Frank Calder from the Nisga'a Tribal Council, Ed John from the Carrier Sekani Tribal Council, Joe Mathias from the Squamish Nation, Sophie Pierre from the Kootenay Indian Area Council, Miles Richardson from the Haida Nation, Don Ryan from the Office of the Gitksan-Wet'suwet'en Hereditary Chiefs, Tom Sampson from the First Nations of South Island Tribal Council, Andy Thomas from the Esquimalt Nation, and George Watts from the Nuu-chah-nulth Tribal Council. Many representatives of a diverse range of other interests also participated, including the Mining Association of B.C., the B.C. Federation of Labour, the Fisheries Council of B.C., The Sierra Club, Westar Timber Ltd., the northern municipalities of Vanderhoof and Kitimat, the Canadian Petroleum Association, and the Business Council of British Columbia.

The only parties which were invited to the conference and did not attend were the federal and provincial governments. Each expressed some ambivalence about their involvement in so public a forum in a discussion of their policies. These governments undoubtedly knew there was a need for a change, but they were not clear what such a change might look like. They knew, however, that their inactivity in relation to the aboriginal land question was drawing increasing criticism and raising concerns in many circles.

This was certainly the case as far as "third party" interests—non-governmental and non-aboriginal—were concerned. In recent years, there has been much concern on the part of these diverse interests about the role of governments, particularly the provincial government, in relation to the aboriginal land question. As the Council of Forest Industries of British Columbia has noted:

> By refusing to participate in negotiations with Indian claimants, the provincial government has opted for litigation. . . . Governments face the prospect of eventually being forced into negotiations with court-imposed determinations as guidelines. The choice of the provincial government is to agree to negotiations voluntarily, and have a free hand in shaping the process and outcome, or to continue to stall until the courts have made the determination that Indian title exists as a burden on the title of the Crown.

For several years, the labour movement has also expressed the view that the time for action on the part of governments is overdue. The International Woodworkers Association (IWA) has pointed out that labour has "long held the view that Canadian (and especially B.C.) governments should negotiate settlements with the aboriginal peoples." In 1987, the B.C. Federation of Labour strongly criticized the provincial government for not addressing the land question. At that time, it passed a resolution condemning "the provincial government and Premier Bill Vander Zalm for their racist attitude in refusing to enter into negotiations over the issue of Aboriginal self-government, based on recognition of Aboriginal title." The IWA, in a paper on *Forest Policy* approved by its National Executive Board on December 13, 1989, urged the negotiation of claims settlements because the vital issues of forest tenure and land-use would "not be satisfactorily resolved until government addresses native land claims. . . ."

The labour movement has not been the only third party interest calling for a settlement of the land question over the past few years. Such calls have come from many quarters and, in many cases, they have come with pleas for more economic predictability or the elimination of related uncertainty in the province's economy. The British Columbia Chamber of Commerce, for example, stated as part of its "1988-1989 Policy and Positions" that:

> Native Indian Land Claims are creating uncertainty among Native Indians and among the population at large and the uncertainty is having a detrimental effect on possible industrial and commercial projects. This is adversely affecting employment for both Native and non-Native people in many areas of British Columbia.

In a similar vein, the Mining Association of British Columbia, in a letter to The Institute for Research on Public Policy, dated November 11, 1989, also emphasized the need for settlements:

> Considerable uncertainty exists regarding mineral title in the face of Indian land claims; it may well be one of the factors causing the hestiation in large capital investments in B.C.'s mining industry.

Third parties have also expressed their views concerning the framework for land claims negotiation process. Prior to the "Reaching Just Settlements" conference and in its aftermath, there has been some considerable interest in the representation of third party interests at the land claims negotiating table. As E.M. Berthelsen of Barrack Mine Management Inc. put it in a December 12, 1989, letter to the Institute:

> Our industry feels very strongly that so called 'third parties' which can have a substantial stake in land claims should be a part of any negotiation that does proceed. In short, negotiations solely between native groups and the Federal Government would not in our opinion be acceptable.

The Fisheries Council of B.C. has called for "the Government of Canada to open up these secret negotiations. . . ." The Council maintains that "proper implementation of the dictum of third party consultation is important to public understanding of the issues and informed debate of appropriate solutions." The Council also insists it is critical that "the existence and magnitude of third party injury be determined prior to any conclusion of negotiations." The Fisheries Council is not alone in its concerns. The British Columbia Chamber of Commerce has also called for the federal government to "fund research and preparation by third parties whose interests could be affected in the resolution of any proven land and/or resource claim."

The involvement of various third party interests in events such as the "Reaching Just Settlements" conference and the increasingly articulated concerns of these groupings as well as other British Columbians were forces behind the changes in the summer and fall of 1990 in the British Columbia government's position regarding its involvement in land claims negotiations. The key force, of course, was the intensifying political organization of aboriginal peoples and governments in the province and the economic uncertainty created by their legal and direct action initiatives, but the role of the third parties should not be dismissed. They are a force that will continue to influence the debate around the land question in coming years.

Another factor was the development of a much more active Opposition stance on the matter. Shortly after the "Reaching Just Settlements" conference, pressure on the federal and provincial governments continued to mount, as the British Columbia New Democrats issued a policy paper entitled "Towards a Just and Honourable Settlement of the Indian Land Question in British Columbia." The party committed itself to a five point program:

1. recognition of aboriginal title and aboriginal peoples' inherent right to self-government;
2. provincial participation in modern-day treaty negotiations to achieve a just and honourable settlement of the land question;
3. recognition of third-party interests in negotiated treaties on the land question,
4. the pursuit of sustainable economic development initiatives in both aboriginal and non-aboriginal communities resulting from settlement of the land question;
5. renewal of constitutional processes aimed at entrenching aboriginal peoples' inherent right to self-government in the Constitution of Canada.

With the articulation of its new policy on the aboriginal land question, the provincial government moved quickly to adopt many of the points in the New Democrat program. A key difference remains between the two parties, however, and that difference revolves around the question of aboriginal title. The Vander Zalm government has at long last moved British Columbia to the negotiating table, but it still adheres to its traditional position that aboriginal title does not exist and, if the courts find that it does exist, the financial responsibilities for extinguishing such title are the concern of the federal government.

For the provincial government, negotiations and eventual settlements have become a matter of political necessity and a key to economic certainty. For aboriginal peoples, negotiations and settlements are more than that, they are about recognition, recognition of their historic presence in the land that came to be known as British Columbia long before the settlers of the nineteenth and twentieth centuries came to it and recognition that they have a special and unique claim to the land. The provincial government wants an accommodation. The First Nations want much more; they want an accommodation based upon recognition. They do not want an accommodation based upon acquiesence or assimilation into what is for them, in many ways, a foreign order of things.

The relationship between recognition and accommodation is just one part—if a fundamental part—of the debate on the aboriginal land question in British Columbia today. There are other issues. Some have to do with the nature, extent, and future status of aboriginal rights such as those which relate to hunting, fishing, and self-government. Self-government, itself, is an overarching issue. Does aboriginal self-government mean something close to municipal government? Does it mean national sovereignty? What does it mean?

There are other issues: how will the land and resources be managed and conserved after settlements? Who will own these lands and resources and who will pay for the settlements? Will settlements impact on different sectors of the economy and various regions in different ways? And, if so, how will they do so? What will be the role of the federal and the provincial governments in reaching and implementing settlements? Indeed, what will be the role of other British Columbians, the so-called "third parties"? Will they have a role? Will they find themselves strangers in their own land, or will they, for the first time, be part of a British Columbia where economic destiny is not determined by the needs of forces external to the province?

As 1990 drew to a close, these issues marked the debate on the aboriginal land question in British Columbia. They will continue to do so in the coming years. This is a matter which will not go away. Nor will the issues relating to it. The exploration of this matter and these issues is the heart of the papers which are contained in this volume. As Murray Coolican, the former Chairman of the federal government's special Task Force to Review the Comprehensive Claims Policy, suggests in his opening statement, the situation in British Columbia mirrors the debate about aboriginal peoples and the land which has taken place from one part of Canada to another in recent years.

This debate, as it sharpens, will become even more of a multidimensional one. It will have an historical and legal dimension. It will revolve around the shape and pace of the negotiations process; the likelihood of settlements; the possible shape of these settlements; and the roles that aboriginal peoples, the federal and provincial governments, and other affected interests in British Columbia might take in negotiating and achieving these settlements.

These are the themes of *Reaching Just Settlements*. This volume is intended to spur discussion and thought about the complex issues which characterize the debate around the aboriginal land question in British Columbia today. This debate is well over one hundred years old, but it is one which has just barely begun. It is a debate about the existence and nature of aboriginal title to the land and rights such as the right to self-government. It is a fundamental debate, so fundamental that even the words which are used to describe it give rise to further differences on the part of the parties involved.

As one reads the individual parts of this book, two major impressions arise over and over again. One concerns frustration and apprehension. In many cases, these are overriding emotions. The other relates to the common ground that exists on many fronts. There is a common ground that is emerging among British Columbians on the aboriginal land question. This common ground finds its roots in the need for social justice, economic certainty, and political capability to meet and resolve a matter as outstanding as this one. If *Reaching Just Settlements* can help to illuminate this common ground and to sharpen an understanding of some of the issues which surround it, then it will have accomplished its purpose.

Acknowledgements

The "Reaching Just Settlements" conference was held at the University of Victoria in February, 1990. This book contains the proceedings of that conference. Many individuals and organizations are to be thanked for their contributions to this endeavour.

The University's School of Public Administration and Division of University Extension and Community Relations sponsored the conference and provided some of the seed funding for this volume. This sponsorship was undertaken in collaboration with the Centre for Indian Training and Research and The Institute for Research on Public Policy. Each of these organizations made a valued and valuable contribution to the conference. They are to be thanked.

The Conference Planning Committee played a very active role, as it laid down quite stringent guidelines concerning the organization and substance of the conference and then, to a person, took part in it. This Committee consisted of: Frank Cassidy, Conference Moderator, School of Public Administration, University of Victoria; Clarence Ap-

sassin, Headman, Treaty 8 Tribal Council; Rod Dobell, President, Institute for Research on Public Policy; Heather Kucheran, Program Assistant, Division of University Extension and Community Relations, University of Victoria; John Langford, Director, School of Public Administration, University of Victoria; Tom Sampson, Chairman, First Nations of South Island Tribal Council; Kathryn Teneese, Executive Director, Centre for Indian Training and Research; Andy Thomas, Chief, Esquimalt Band; Gordon Thompson, Director, Division of University Extension and Community Relations, University of Victoria; George Watts, Chairman, Nuu-chah-nulth Tribal Council.

Heather Kucheran is a person who made an extraordinary contribution to the conference. Her job was "simple": to make sure everything worked right. And it pretty much did. Darcy Dobell, of The Institute for Research on Public Policy, also made a strong contribution to the conference. Moreover, she took a lead role in turning the transcripts into the papers contained in this volume. It is not too much to say that without Heather Kucheran and Darcy Dobell, *Reaching Just Settlements* would not have seen the light of day.

There are many others who should be recognized for their contribution to this effort: Gale Woods of the University of Victoria's Extension department; Anne Harvey and Wendy Shergold of the School of Public Administration; and Terry Hunt, a student in the School's Master's program.

To all of these people, and to countless others, the phrase "thank you" is not enough, but it is offered with true feeling.

1
Introduction

Sammy Sam

Tribal Elder
First Nations of South Island Tribal Council

I would like to share with you what we feel as native people. It's appropriate to ask the Creator to give us some guidance. This is the philosophy of the Elders before me; when we are speaking of something that we want, we ask the Creator first.

To the people that are here this morning, I hope that we will all learn something, and that you will learn about native people. To the native people and the leaders that have travelled far to be here at this forum, I wish that the Creator will give you that blessing and that you will speak for your people back at home because of the theme this morning—reaching just settlements. I think this issue has been ongoing for so many years that I don't know if I'm going to see it end in my lifetime.

I can remember when I was a young man, the issues that were being talked about are issues that are still with us today; that is, reaching a just settlement for our people. Hopefully the prayer that I offered this morning will reach all of you so that we can learn and we can hear, so that when you go away from this conference you will understand the native people a little more than you did when you came into this room. I wish to thank you and I wish you luck.

Andy Thomas

Chief
Esquimalt Nation

First of all I would like to introduce myself. My name is Senupin. I'm the hereditary chief of Swxeymethulth, or Esquimalt. My English name is Andy Thomas; that's the Christian name I received when I was born and brought up. I'd like to welcome everybody into our traditional territory, and to wish everyone success in reaching a just settlement. I think this is a start in educating the public and corporations and everybody else about the positions that we take and why we take them.

We know we are from here. We know we are from this land. Because my name Senupin comes from Swxeymethulth, it's from the land. That's why we hold this land dear to us. That's why you have to understand that we have that feeling for the land. I don't mean to make fun, but you take a look at the name of Smith and Jones and I ask you, where do those names come from? They come from another part of the world. The names that we carry are right from here. I hope that the explanations that come out of this conference are going to be worthwhile and everybody will leave here with a better understanding of each other's position.

Tom Sampson

Chairman
First Nations of South Island Tribal Council

My dear friends and relatives from far, I wish to welcome you also along with my cousin Senupin, Chief Andy Thomas, to this territory called Victoria. I wanted to say to you through the prayers of my uncle that we hope we can reach the agenda items that we have today—reaching a just settlement—or at least begin to understand what it means. We hope that those of you who come from far away, and those of you who are in government will listen to what will be said in the next few days because it is critical that we begin to address the issue of who we are. For too long it seems as though we have been almost a faceless people in our own country, and it is time that you people from other parts of the world who now occupy our land begin to deal with this in a sincere manner. Because if we don't deal with this issue we can see the emerging trends not only in this country, but in other countries, and surely we would not want to invite some of the things that we constantly see in other parts of the world or in other parts of this continent.

So when we talk about reaching a just settlement, we really mean that. We hope that is why you are here. We hope that you will open your hearts and your minds as said in the prayers because that is where it is going to come from. We can put thousands and hundreds of documents in front of you, but if you do not have the heart nor the desire to change, very little will come out of this conference. So we ask you to look into your hearts and into your minds and we ask you to examine them. We ask you to look at yourselves and see how we have had to live in a country that our ancestors occupied for centuries. We wish to see our children in the future with an identity and with a face that they can be proud of. It is time for change and it is time for us to move in that direction so that our children—yours and mine—can have a meaningful future together in this land called Canada.

Frank Cassidy

Associate Professor, University of Victoria
and Research Associate, Institute for Research on Public Policy

Our keynote speaker, Murray Coolican, headed the federal task force to review comprehensive claims policy, which resulted in a report recommending major changes in the federal policy, including an end to the extinguishment policy and much greater attention to the role of aboriginal self-government in land claims settlements. I hope that the presentations we just had and this keynote address will start a dialogue. I think everyone hopes that we are not coming here to study the land question; we are coming here to do something about the land question. The time is long past in British Columbia when we need just settlements; we need recognition, and we need accommodation. We need to bring people together. We need to define the issues. We need to establish the facts. We need to talk with each other. We need to negotiate and we need to find the common ground.

There has been a lot of speculation in the last few weeks about why the federal and provincial governments are not on the agenda of this conference. The ministers from both of those governments were asked several times to attend this conference, and they said they could not. We could see this symbolically, as representing the lack of response on the part of the federal government and the provincial government to the land question. I think though, we could see it with a bit more understanding, as representing the fact that neither the federal government nor the provincial government is any longer feeling comfortable coming to open forums like this and holding to the positions that they have long held. There is some kind of reassessment taking place in both levels of government. The reassessment is long overdue and it is too slow, but it is taking place. In this sense, part of the response of the federal and provincial ministers was a response of respect, saying that they knew they could not come here and say what they had said to you before. They now know they have to come here and say something that represents movement, that represents something meaningful.

But we should not think about who is not here. We should not spend two days talking about what the federal government or the provincial government has not done. We need to talk about who is here; we need to talk about the fact that there are people here from every part of Canada; that we have people here from every important interest in British Columbia; that those people came here willingly to discuss the land question. We need to have a real dialogue. What we don't need is to simply talk at one another, and repeat our previous positions. It is quite clear that there is going to be movement on the land issue, and it is not going to take place at the initiative of government; it is going to take place at the initiative of labour, industry, municipalities, environmentalists, and most importantly, aboriginal peoples. That is what is happening, and we need to be part of that process.

Murray Coolican

Vice-President, Government Relations
National Sea Products, Halifax

For several years at the Canadian Arctic Resource Committee, I was a close observer, and critic, of Canada's northern policies—environmental protection, the pace of oil and gas development, devolution of power to territorial governments, and land claim negotiations. For six months in 1985 I had the privilege of becoming fully immersed in national land claims policy with a group of four other Canadians—including Chief Joe Mathias. In the spring of 1986 our report, *Living Treaties, Lasting Agreements*, was released to the public. Many months of lobbying followed—and then the government's response. I retreated to Halifax, a place where land claims was not, and still is not a major public issue. From Halifax, I have not kept pace with recent developments in land claim negotiations.

No doubt some things have changed. But without question much has not.

I leave to those of you who are intimately familiar with land claims today a discussion of current developments.

What I would like to do is return to the fundamental approach taken in our report. Our report was more than the ideas of five people, we had the benefit of several hundred years of history, we consulted recent legal developments, we talked to governments both federal and provincial. But we also consulted with native groups across Canada, groups with direct experience in negotiation and direct knowledge of the policy. I believe the basic principles and objectives we set out in 1985 are just as relevant today to the theme of this conference "Reaching Just Settlements."

Our first step was to review the history of the relationship between the aboriginal peoples and the white settlers—early peace treaties, the Royal Proclamation of 1763, the land cession treaties, modern land claims—and throughout, the role and the changing view of the courts. We began at the point where European explorers first contacted North American Indians.

Joe Mathias reminded us that we had not gone back far enough in our review of history. He took us back to the time before the arrival of the white man, when the aboriginal people were independent societies, with their own languages, culture, laws, and self-sustaining economies dependent only upon the bounty of the land and the sea.

Our review of history led us to our first conclusion that aboriginal peoples, where no land cession treaty has been signed, do hold a legal interest in the land used and occupied by their forefathers. In reading the many legal opinions, I was especially amused by the legal reasoning expressed by an early American jurist who noted the Indians had continued to occupy the land after claims of sovereignty by the British Crown. He reasoned that since there had been no subsequent charges of trespassing there must have been a legal interest. But over the years, the courts have been unable to provide us with a precise definition of the legal interest that would enable us to settle claims quickly and with little dispute.

A second important consideration is that aboriginal rights have been recognized in Canada's new constitution of 1982. The Constitution of Canada recognizes and affirms existing aboriginal and treaty rights. A series of constitutional conferences was held in an attempt to define these rights in more specific terms. As we all know, agreement was not reached and in my view the bleak prospects for Meech Lake suggest further progress in the constitutional arena may have to wait for another generation.

There have, of course, been disagreements about what exactly was meant by the aboriginal rights recognized in the constitution. Where are these rights still existing or not existing? I do not intend to enter that debate today. But the aboriginal rights clause in the constitution did signal a turning point in the relations between Canada and its aboriginal peoples. No longer can the Parliament of Canada unilaterally extinguish or modify aboriginal rights. Changes in existing aboriginal rights require the consent of the aboriginal groups concerned, or a constitutional amendment.

The goal of aboriginal self-government had become an important part of government policy and the constitutional discussions. The report of the Special Committee of the House of Commons on Indian Self-Government helped to achieve this new direction. The obstacles to any real progress in constitutional discussions led the Government of Canada to pursue the objective of self-government through negotiations outside the constitutional talks. Unfortunately these negotiations have proceeded at the normal pace of most negotiations between government and aboriginal peoples.

All these conclusions taken together recognize that both the right to land and the right to determine what happens on the land are essential to the definition of a new relationship between Canada and our aboriginal peoples. But these rights are not well defined in the constitution, in the law, nor is there any clear interpretation of these rights by the courts.

The courts have had a long history on land claims and aboriginal rights. Our task force agreed that in spite of this experience, perhaps because of it, the courts were not the best forum for a resolution of these issues. We agreed with the views expressed by M. Justice MacFarlane of the British Columbia Court of Appeal when he said:

> I think it is fair to say that, in the end, the public anticipates that the claims will be resolved by negotiation and by settlement. This judicial proceeding is but a small part of the whole of a process which will ultimately find its solution in a reasonable exchange between governments and the Indian nations.

While our task force favoured negotiation we had to recognize that the record of negotiations to date has not been terribly good. Negotiations have, for the most part, only been successfully concluded where imminent economic development has been threatened by court decisions or the prospect of delays caused by litigation. From the point of view of aboriginal groups the risk of litigation appears to be worthwhile. The policies of government have encouraged litigation. Where government absolutely refuses to negotiate the only alternative is the courts.

This "lottery of litigation" is expensive and time-consuming; its adversarial approach builds divisions and bitterness that is not a basis for the establishment of a constructive relationship between government and aboriginal people. For that matter litigation is not a great beginning to the relationship between government and any group within society. Negotiations will be required once the courts have ruled. What are we waiting for—let's get on with the negotiations now. We are postponing the inevitable. And those who refuse serious negotiation are taking a considerable risk. We risk a decision by the courts which may be correct in law but impractical in reality. We risk decisions which look back to correct wrongs of the past and not forward to a new relationship. We also risk what goodwill is left between our governments and aboriginal people.

But we must not only discourage litigation, we must move away from legal objectives for the negotiations themselves. If the basis for negotiation is only a legal one, the negotiations will be adversarial and narrow. Adversarial negotiations where the other side is the government have been one-sided. The tactics on both sides seem to be delay, wearing the other side down, and settlement seems to occur only where the aboriginal group has some kind of stick usually received from the courts. (Incidentally, my recent experience in the fishing industry confirms that negotiating with government is difficult for any group in society.) The legal perspective will look back and not forward. And our recent history is filled with long, drawn-out negotiations, and narrow legal agreements whose relevance departs before the ink is dry. The claims against the agreement about the failure to meet its terms begin almost immediately.

And so our task force sought to define broader objectives for the land claims process. We did this for two reasons. First we believed that negotiations stood a better chance of success when both parties held common or compatible objectives. Second, we believed that agreements based upon common objectives stood a better chance of survival over the long term. I suggest that your deliberations over these two days should search for common objectives between the interests of aboriginal peoples, governments, and other interests involved in the process.

Let me review quickly the aims and objectives we suggested for the federal government's participation in negotiations.

The task force viewed Canada's interest as having two parts. First, it is in the national interest to encourage the cultural and economic development of aboriginal communities as strong, confident, and distinctive societies within Confederation. Secondly, it also is in the national interest to provide a climate suitable for the sustainable economic development of Canada to the benefit of all Canadians. We translated these interests into objectives, which based upon our consultations, were compatible with those of Canada and the aboriginal people.

We recommended that agreements should:

- define the relationship between governments and aboriginal peoples in Canada;
- establish a framework of certainty concerning land and resources that accommodates the interests of aboriginal peoples and other Canadians;
- provide the opportunity for the development of economically viable aboriginal societies;
- preserve and enhance the cultural and social well-being of aboriginal societies for generations to come; and
- enable aboriginal societies to develop self-governing institutions and to participate effectively in decisions that affect their interests.

The first objective refers to the definition of a relationship. Like any relationship it was our view that this relationship should be capable of growth and change. But our second objective referred to a framework of certainty concerning land and resources. History has shown that agreements or treaties where the only objective was finality, have failed.

In our own institutions, in our constitution, we recognize the need for change through amendment procedures, however cumbersome they may be. To believe that yesterday, today, or tomorrow we can fix with finality our association with aboriginal societies is to deny the potential for growth and for change which is so important to any society. At the same time, governments, other private interests and native groups *all* agreed that a framework of certainty was required which would allow for the development of land and resources.

The approach we recommended must also allow for flexibility. Settlements must recognize the regional differences in the country as well as the different aspirations and histories of the aboriginal and non-aboriginal communities within a settlement area. We must accept where necessary, but avoid wherever possible, settlement terms that must be applied throughout Canada or even throughout British Columbia. "Parity among agreements should not necessarily mean that their contents are identical."

The final three objectives are related to the economic, social, and political non-dependence of aboriginal communities. We did not mean here to ignore the economic, social, and political well-being of all Canada or B.C.

The economy of Canada will be stronger if the economies of aboriginal communities are strong. Canada's social fabric and culture will be tremendously enriched by aboriginal communities that are confident about their past, present, and future. And our spirit as a nation will be clearer and stronger if aboriginal communities are truly self-governing, self-sustaining, and non-dependent. Our voice internationally will have more credibility when we promote the observance of human rights and an end to colonial and undemocratic regimes in other countries.

Our wealth as a nation, and certainly the wealth of this province, has been generated from the land and resources that aboriginal groups agreed to share with the growing nation. And yet aboriginal people have had little opportunity to share in the benefits—they have been caught in a legal and policy framework that has perpetuated a relationship of debilitating dependency. By almost any yardstick of social or economic well-being our aboriginal people fall well short of the rest of Canadian society. Our policies of assimilation, the years of paternalism and protection, and the do-good liberalism of the sixties and seventies continue to fail. But, as we said in our report, "aboriginal peoples have never accepted the notion that the price of their well-being in the land of their ancestors was the abandonment of their cultural distinctiveness and special aboriginal status." That is why we must set objectives for claims negotiations which are positive for Canada and aboriginal communities.

Some of you here today represent interests who feel threatened by land claims. There is uncertainty about the outcome of proceedings in the courts; there is also uncertainty about the outcome of land claim negotiations. Conferences such as this one are important to bring your interests into the discussion in a forum where no decisions are going to be made. But, I suggest that you take the opportunity of this conference to express your views as concerns to be addressed, not as roadblocks that cannot be removed. In fact the discussion in the next two days will be more valuable if we all approach the issues creatively with open minds, looking for solutions and common ground.

Lloyd Barber was one of those Canadians whose work our Task Force built upon. In 1975, as Commissioner on Indian Land Claims he said:

> I would urge the Government and native people to strive for an agreement which is flexible enough to permit the necessary evolution. I don't think anyone can draw out a detailed master plan for the future, and the settlement terms should provide for the greatest possible latitude for change. Rigidities may only lead to a new set of problems.
>
> I would suggest to you that the negotiation on land claims provide an unprecedented opportunity to get at some of the important, deeply rooted problems and differences between Indians and non-Indians, and work out a basis for a more productive and harmonious future. If the negotiations are superficial, or based on criteria which do not really reflect the needs and concerns of the people affected on both sides, they will certainly fail. This is the time for hard thinking, frank dialogue, and imaginative approaches. If the difficult and uncomfortable points are skirted, success will not be achieved.

I hope you will take Dr. Barber's advice for this conference.

2

Defining the Issues, Establishing the Facts

Len Fox

Mayor
District of Vanderhoof

It was with some hesitancy that I accepted this engagement, given the complexity of the issues and the fact that municipalities never even recognized this as an issue until probably ten to fifteen years ago. I suppose part of that recognition is due to the thrusts of the Kamloops Band and their proposed changes to the Indian Act, which would allow them to tax reservation lands. That caused a lot of municipalities very quickly to identify this as an issue.

I would like to speak to you this morning from a northern perspective, from a perspective of geographically 66 percent of the province with only 15 percent of the people. I speak to you from the North Central Municipal Association area, which runs from 100 Mile House, north to the Yukon Border and from the Alberta border to the coast. We recognized some time ago that the land claims issue was playing havoc with our opportunities to develop our resource-based communities. Through some of the conflicts that have happened over those resources, we perceived that there was a wedge being driven between the Indian people and the communities as a whole. There are blockades of logging roads, conflicts over the resources, and several large industrial developments which were proposed where it was very obvious that the native issue played a real role in whether or not those things became a reality. It's with those kinds of concerns that I'm here today, identifying that particular concern that the Indian people and the white people of Northern B.C. seemed to be working at odds.

It was with this in mind that the Northern Development Council in 1983 and 1984 took the initiative to develop in the absence of any provincial and federal initiatives a program of how the land claims issues could be developed. That was quite a learning experience because we did not know how much the issue changed from band to band. However, we firmly believed that the provincial government had a role to play in these negotiations, so we took the initiative to try and bring them to that particular table. When you look at some of the provincial government statements recently where they appear to have softened up towards the land claims issue, that is actually very good music to the ears of the northern communities. We in Northern B.C. perceive that we have a real social problem between the white communities and the Indian people. That varies from community to community. But one of the real issues here is the fact that in the process of the native people trying to bring to the federal and provincial governments an awareness of their concerns over the resource, they have indeed affected the workers negatively—whether you look at the blockades of roads, or whether you look at the threats to communities where reserves are right within the boundaries of the communities. There has been a splitting apart of the two peoples. That is a very real concern to most municipalities, and we would like to see something done. We don't believe that it can be done from the outside; it has to be done from within. However, the minute we start discussing the issue with the bands, we both seem to be forsaking what it is we are trying to push. The minute Council starts talking to the respective bands and identifying mutual objectives, whether it is socially or economically, we appear to the electorate to be giving in to the land claims issue; and on the other side, the minute the band members start talking to us about economic opportunities, they appear to be forsaking their particular stands on the issues. So we have reached an impasse, and that is a real concern.

In terms of the issues that are to be identified and addressed in the future and through the land claims settlement, municipalities are extremely concerned about the existing services that we now offer, and the formula for payment. In many instances we have contracts with bands delivering services, whether that be sewer, water, roads, or other services. What happens to those kinds of agreements? In a situation where the band has taxation rights and lies within the community boundaries, just how do they work together in order to achieve economic well-being for both parties, or are they in fact going to continue the conflict by competing with one another? These are what we perceive to be real issues, and to that end we would like to see in the upcoming negotiations—and I'm saying that positively because I believe they are definitely going to happen—a person from the UBCM, or municipal association, to have observer status to be sure that these kinds of issues can be dealt with, so that we can come out of these without continual conflict.

There is great economic opportunity in northern B.C., but it takes both groups of people to work together for the betterment of all in order to achieve our economic potential.

Ken Georgetti

President
B.C. Federation of Labour

I would like to start by making it very clear to everyone here that the Federation of Labour very much supports the political negotiation process on title and land claims. We all know the economic and social injustices B.C. Indians have suffered. We also know the historic injustice that has been perpetuated on natives across this country. But we want political negotiations, not litigation; even though I think the courts according to our law have the right to be involved in this process, we are interested very much more in the political negotiations process. I emphasize the words "political negotiations" because in this case it really isn't just a straight negotiating process; it is as much a political process as it is a negotiating process.

The speaker before me captured a feeling that permeates our society that really isn't logical but is still there, about "giving something away" in a municipal sense or a federal sense or a provincial sense. That infers very clearly that we are giving something away that we own. But when you look at the law of this land, although the Calder case didn't establish clearly that native title was just, it did at least start the federal government on a process of having to negotiate rather than having to go to the courts. They were surprised, as politicians usually are, that the courts were that close to making a decision unfavourable from the federal government's perspective, on aboriginal title.

What we are saying very clearly is that we are comfortable with the negotiating process. We know how that process works. It works very well from our sense. It involves compromise in lots of cases. It involves success in many cases. If it is done properly, all parties can easily walk away from that process with a sense of pride and a sense of accomplishment on their side. But in this case, it is not a matter of giving away and it's not really a matter of win-lose; it is more of a matter of understanding and appreciating the process and letting the process work. But in saying that, I would like to make sure that you think about the process as it exists now. I think we have got ahead of ourselves there; because of the Calder case, the federal government will enter into negotiations and although they never prove to be fruitful, they are prepared to go through the motions at least. It appears that they are doing something, even though they are doing nothing.

We have to act as groups, and the commitment is there from labour. I think the natives in this province should sit down with the UBCM and with the B.C. Federation of Labour, and enlighten us and help to resolve the issues that concern the municipalities and the labour movement, and then let us join together as a coalition to approach the government with the negotiating process. Right now, in order to resolve negotiations, you need pressure. In order to put pressure on the government of the day, we are going to have to have numbers. We are going to have to have people in large groups—like the Federation, like the UBCM, like the Mining Association—agreeing with the principles of title that we are asserting in British Columbia. We can then take that to the bargaining table to show the government that there is popular support, because right now the government knows that most people don't know enough about land claims to even be bothered listening to them. Therefore, there is no pressure on the politicians to negotiate.

We know, especially in the labour movement, the problems of court decisions as they affect human relations on a day-to-day basis. Courts are very expensive, they are inflexible, they are rigid, and they are time-consuming. In fact, my calculations show us that the labour movement has paid for the court house on Robson Street in Vancouver about seven times over now. We haven't got any further ahead going there and paying for that process and paying all those injunctions and paying our lawyers. We get rigid, fast, hard decisions that don't solve the problems. I don't think fear and ignorance should define our relationships. In order to make the process work, working people have to sit down and define and discuss the issues at hand.

We have very many commonalities in the labour movement with the native community in British Columbia. We signed with the native community what we generally refer to as the Tin Wis Accord. I would like to read you Resolution #3 in Tin Wis to let you know where the labour movement stands. This, by the way, was unanimously endorsed by the governing body of the federation:

> In accordance with the above, we further commit ourselves to develop and implement mechanisms for native people, for trade unionists, for environmentalists, women, youth and others to work together on a regional basis to resolve resource development and environmental issues and conflicts and to further the process of developing a people's alternative to the policies of the present government. We share very closely with the Indians a social democratic perspective of people first before maximization of profits.

I think it is in everyone's interest to share good health, to share economic security, a livable community, and a good education for our children. Whether you are an Indian in Prince George or a white person in Prince George, you don't want your kids to have to go to Toronto to find a job. We have commonality on the environment: long-term forest planning; long-term fisheries planning. The resource-management philosophy of the Indians in British Columbia is long-term and much sounder than that of the industries involved in resource extraction.

We recognize that negotiating land title presents difficulty. No one knows how this is going to work, but we in labour at least want to sit down and discuss these issues. Working people have concerns and questions. These issues are: a) given self-government, which will involve an entirely different kind of sovereignty, we need to negotiate from our perspective, for example, the application of B.C. labour laws, employment standards regulations, Workers' Compensation Acts, environmental standards, and taxation questions—the taxation issues that we use to redistribute benefits, both individual and institutional; and b) how are royalties going to work on the native land title? How do royalties work to redistribute the wealth? What is going to happen with those things? How will the mingling of these two economies, native and non-native, work? I think there is a solution. In fact, I know there is a solution, but the commitment has to be there to make it work.

What I clearly want to see is that the Federation and working people in B.C. are committed to sit down to understand how it will work, and come to terms with making it work. If everyone in this room, and the people that you represent, are committed to the same thing, I don't know a politician in Ottawa and Victoria who won't listen to us. That's what we should do. Define the issues among ourselves and take the lobby as a coalition.

Joe Mathias

Chief Councillor
Squamish Nation

I am pleased to be here to discuss a very serious and critical issue to aboriginal people and non-Indians, the matter of reaching just settlements. In my opinion, the comprehensive claims policy of the federal government is basically a farce. It is also my opinion that the position of the British Columbia government on the B.C. land question is basically a racist position. It's clear to me and to most aboriginal people in this province that both levels of government only want our extinction, and not our humanity. I take the view that the comprehensive claims policy of the federal government and provincial government on the land question is self-serving, because the fundamental objective of the policies of both levels of government is extinguishment of the people's rights to their way of life, to their culture, their language, their religion, and their lands. That's the overarching theme of their position:

extinguishment and extinction of a people's rights. The claims process of the federal government—and if the province was involved in the process, no doubt it would be the same—basically is aimed only at reinforcing the existing jurisdictional power of the province of British Columbia at the expense of the aboriginal people. Both policies at both levels of government basically are framed to protect the interests of the non-Indian, not to deal with the interests of the aboriginal people of British Columbia. If it was framed in the way that would deal with our interests, they would not be talking about extinguishment. They would be talking about protecting, preserving, and enhancing our rights to land and resources and our cultural and our self-government rights. The policy is self-serving because it's designed to serve the interests of the governments and non-Indians. They are not embracing the interests of the aboriginal people at all. I think we have to establish this fact.

I think there has to be an honest, open realization of this one fact, that the policy of the federal government and the existing policy of the provincial government on the B.C. land question, in my view, is designed to promote hatred. It promotes distrust. It promotes fear. It promotes racism. On the one hand, you have aboriginal people living under the threat that their way of life will be extinguished if they enter negotiations. Then on the other hand, you have municipal politicians, provincial politicians, federal politicians, industrial leaders, business people, and the ordinary Joe Public on the street, living under the fear that if land claims are settled, their own interests will be threatened. Is that how we should be tackling this problem? To have our senior levels of government enunciating and standing by policies that basically promote distrust between peoples? That is how they are framed; that is how it has to be dealt with. Unless we deal with that issue of how the policies are designed and the objectives of those policies, reaching just settlements will not take place. All it does is generate fear and distrust.

I spent the past three or four days thinking about what other people have said on this topic, and there is a mountain of material. Documents and briefs, court cases; a mountain of material. It is of great interest to academics. It is of great interest to lawyers. It is of great interest to white bureaucrats and now it has become of great interest to Indian politicians and those involved in this question. But where does it lead us if we don't come back to the fundamental mechanisms that can resolve the issue? That is federal-provincial policy. Those are the mechanisms that will operate to reach just settlements. We must examine how those policies are framed before we move on.

It is interesting to note that here in Canada aboriginal title—at least the term aboriginal title—is well established in Canadian law. We also know that aboriginal and treaty rights are entrenched in the Canadian

Constitution by Section 35, and that Section 52 of the Canadian Constitution makes that document the supreme law of the land. Yet we are operating under a federal comprehensive claims policy that denies the existence of aboriginal title. The same governments that entrenched Section 35 in their own Constitution, deny the existence of aboriginal rights; and more importantly, the existence of aboriginal title. Yet, their supreme law indicates to them where they should stand. The First Minister of this province agreed to the entrenchment of Section 35. Aboriginal rights if it means anything means a right to land title. That's entrenched in the Constitution. We take that view. Yet, both levels of government have framed policies to deny the existence of aboriginal title or aboriginal rights, or they framed it in such a way that land claims settlement is a real estate transaction, where there is an exchange that we give up certain rights in exchange for this. We give up land and resources in exchange for something from government. We have reduced the process to a real estate transaction.

But we are not talking about a real estate transaction. From the aboriginal point of view, we are talking about rights to govern ourselves, rights to maintain and preserve our culture, rights to maintain and preserve our languages, rights to educate our young, rights to institute our own forms of government independent of white bureaucracies, rights to determine what happens on our lands and to our resources. It's self-government, it's jurisdiction, it's wealth, access to lands and resources—it's not merely a real estate deal. I think if we understand that perception coming from Indian people, then we begin to understand why both levels of governments' policies are fundamentally racist. They are racist on this ground: they deny the existence of aboriginal title, they deny the existence of the right to self-government, they deny the existence of aboriginal rights here in the province of British Columbia. I should read you this:

> The B.C. government maintains that if aboriginal title did exist it was extinguished prior to 1871 when B.C. joined confederation... That if compenation is still owing, it is a responsibility of federal government... That B.C.'s obligation to provide lands was settled under the McKenna-McBride cutoff land agreement of 1919... That if there exists further obligation to provide land, the responsibility lies with the federal government as stipulated in Section 13 of the terms of union.

It goes further than that though. The racism I'm talking about is the whole question of aboriginal title, the whole question of whether First Nations in this country were sophisticated enough to be capable of having rights to land. If you read the legal history behind aboriginal title and aboriginal rights, it was clear in the courts and it was clear in political minds that Indian people were primitive. Somehow they were subhuman; therefore, they had no rights to land. Therefore, it justified the taking of land, water, and resources and giving it to the settlers. A great advocate of that position in the provincial government was Joseph Trutch. He believed that Indian people in British Columbia had no rights to land, no aboriginal rights because we were not sophisticated enough to understand or have the capacity to run our own forms of government, to exercise our own forms of jurisdiction.

I think we have to acknowledge the way that the policies of both levels of government are framed, what interest they serve and the objectives they are intended to achieve, particularly as they relate to Indian people. I think that is a serious issue.

Tom Waterland

President and Chief Executive Officer
Mining Association of British Columbia

Frank Cassidy wrote me, as he did others, to invite me to take part in this forum. He said, and I quote, "there is a need for a forum where interested parties can exchange their ideas, express their concerns and search for common ground." I think that is a very true statement.

A couple of years ago, I shared a panel discussion on resource use with a fairly well-known native person, Bill Wilson, in Nanaimo, at the B.C. Wildlife Federation annual meeting. Bill and I afterwards agreed amongst ourselves that really the things that we were talking about as panellists were very similar, that our aspirations didn't seem to be so different.

We began to talk about perhaps bringing together people from the various resource industries in British Columbia with native leaders to see and search for this common ground. We have had two such meetings. One was at Whistler last June and another in November, in Penticton.

The purpose of these meetings was not to resolve any problems, not to define a framework whereby the whole question of aboriginal issues could be resolved, but simply to create a place where we could have a meeting of the minds to begin to understand one another a little better. That's where my education in trying to understand native people and issues began, although I have been a resident of British Columbia for most of my life. I did have some involvement during my period as an MLA with quite a large number of Indian bands throughout my constituency, but I never really understood the meaning of all the terms we use when we talk about aboriginal title and the social fabric of the native people. Now, as a result of these meetings, I'm beginning to understand.

I think one of the first things that we have to do in order to define the issues and establish the facts is to try and create this meeting of the minds. The issues are not legal issues. I can recall during my time in government several ministers responsible for native issues within the provincial government, when they were first appointed to these responsibilities, coming forward and saying, "Well, I'm going to do something about these native issues. I'm going to find out about them. We are going to establish some policies to deal with them." It wasn't very long before they were captured by the legal people and the bureaucrats within their ministries, and cautioned that there are some tremendous legal problems with solving these issues—that it is really not the problem of British Columbia, it is the problem of another government.

So these people appeared to lose their keen desire to resolve the issues. I'm sure that the same happens in Ottawa from time to time when new ministers are appointed. They soon become captured by the bureaucrats and quite frankly, with all apologies to bureaucrats and particularly those in the Department of Indian Affairs, I don't think it is in the best interests of those bureaucrats to see the issues resolved because they will be doing themselves out of a job if they are. That thought has been expressed to me a number of times in my discussions with many of my native friends.

One of the things that really struck me at our first meeting at Whistler when Chief Mathias and Paul Tennant told us about some of the history of natives, was my unawareness of some of the terrible injustices that have been wrought upon the native people over many, many years in British Columbia. In recent times, we have had an acknowledgement by senior officials in Ottawa of the ills that were done to Japanese Canadians during the second world war; however, as George Watts pointed out at Whistler, there never has been any acknowledgement of the ills and the mistreatment that were brought upon native people in Canada.

I think that has to be a starting point. I was appalled when I heard of some of the things that have been done to our native people over the history of white settlement here. We keep hearing about the governments having to settle land issues and reach an agreement with the native people. I don't think that is really what we want to see; what we have to see is the native people of Canada—in this case, British Columbia—reach an agreement with the non-native people. I don't know how you can do that without governments being involved, particularly bureaucrats within government, but there has to be a way because I don't think governments will very quickly reach an agreement. I think if there is a real desire amongst the non-native people of British Columbia to reach an agreement of some kind with the native people, the governments will have to take part. I think we have to create that understanding.

I still don't totally understand what we mean when we speak about land claims and all the aboriginal issues. What I have learned at the two conferences that we have held, is that it is not nearly as scary as I thought it might be. I don't think we have to fear change. If these issues are resolved, there will be change, but things are always changing in any event and perhaps the change that would be brought about by resolving some of these issues would be a change for the better. I think we understand this business of land claims to mean, "I have to get off my little property over at Tsawwassen and move away because some native person is going to come in when they own the land and chase me out." I don't think that is going to happen. I don't think we have to fear some other type of regime than exists now.

We in the mineral industry, including a number of senior people, attended these conferences at Whistler and Penticton, and we have said we are not afraid of a different landlord, or perhaps a joint landlord, in terms of dealing with the right to extract and explore for minerals. What we are afraid of are landlords who don't understand the nature of our business and the needs of our industry. So the dialogue as it takes place has to be a two-way dialogue. I have a lot to learn and I think most British Columbians have even more to learn about the nature of the claims, aboriginal title, aboriginal desires, and the social and economic needs of the native people.

I think also, in order to try and remove some of the fear that resides in the minds of non-natives, there has to be a dialogue in the other direction as well. I think native people have to express and demonstrate that they understand non-native needs as well. People in our industry do to a large extent still have a certain fear of what might happen in the future. I think the native people have done themselves proud in creating uncertainty in title and the right of the provincial government to issue title to minerals, and forcing other people to understand the issues by creating some uncertainty. What we would like to see is the gradual removal of that through a meeting of the minds, an understanding by each party of the other's hopes, fears, and desires.

Really it is a two-way dialogue, and that did begin at the meetings we had in Penticton. We had one small workshop in which people from the various industries—the fishing, forest, and mining industries—were involved. We had a workshop in which we tried to explain to the native participants just what was involved in searching for, developing, producing, and reclaiming a mine and a mine site. I think we filled a little bit of a void of understanding there as well. We have to do more of that.

As a result of those conferences, we are now planning some very industry-specific conferences to try and expand on this two-way understanding. That, I think, has to be another step in the meeting of the minds and the understanding—not only we the non-natives of the native people, but the native people of us as well.

There is a void of understanding right now between the provincial government and the federal government of the needs and aspirations of people in the minerals business. Some ignorance of the facts is not unique to the native people. I think there may be much more willingness amongst some of the native people I have talked to, to understand the needs of the mineral industry in British Columbia, than there is from people elected in government to understand.

We don't fear something different. We do want things to be as well-defined as possible. People in our industry don't fear some form of native self-government, whatever that might be. I would feel just as comfortable dealing with some form of native tenure-granting system in British Columbia as I do with provincial government granting systems, as long as it is understood in both directions.

What I foresee happening perhaps is some joint involvement of both existing government and institutions and the native people as they assert their rights to resources. People in the mining business in British Columbia operate in many countries of the world. No other country is just like here in terms of mineral title and the things that you have to do in order to explore for and mine minerals, so why should we fear something different there, as long as it works and as long as it accommodates the needs of the people of the province?

There is one other area that I would like to discuss, and that is the involvement of local people in resource development extraction operations. I use the term "local people" whether they be native people or non-native people. All too often, we see developments taking place either in the resource industries or industry of any kind, and the people who live in the areas in which these operations are taking place don't have a chance to really participate. People come in from somewhere else to build the mines and the pulp mills. People come in from somewhere else to work at the mines or sawmills or whatever. I think there is a need for more involvement of local people in these developments.

In closing, I want to reiterate my personal belief, which I'm sure is that of most of the people in my industry. We don't fear something different as long as it is a reasonable approach in terms of title and the right to operate. I would like governments to recognize that fact. As long as there is a meeting of the minds and a two-way understanding, I don't think we have anything to fear in pursuing the just settlement of problems that have existed between natives and non-natives in British Columbia for far too long.

George Watts

Chairman
Nuu-chah-nulth Tribal Council

I want to thank everybody for an opportunity to speak to our European settlers—like we are your Indians. Let's try to break some bad habits. None of us own each other; we are all people and we deserve respect no matter who we are.

Today I would like to come on hard because I believe that Murray Coolican makes a good point—if you don't put the differences on the table, the road that you end up going down is a phoney one; you really don't solve the problems. That's really what we have been involved in for the last twenty years. Sitting here and stroking each other's back and saying how nice we are and, "Yes, we want to talk to you," and all that, but nothing ever changes. Well, I can assure you that things are changing now and they are going to change more and more quickly in the future in regard to the relationship between aboriginal people and non-Indian people in this country. If I was Eric Denhoff, what I would be doing right now after listening to these four speakers is writing to Premier Vander Zalm to say, "Mr. Premier, again the government is behind the people." Obviously, the different sectors and groups in this society are moving ahead of the government in regard to their relationship with Indian people and I believe it is time for the Premier to catch up. There is a saying in the Yukon that there is one lead dog in the pack that knows where he is going, and all the rest are looking somewhere else. I think we have to put our provincial and federal government somewhere down in that pack because that is where they are looking right now.

I want to address three issues. I want to talk about money, I want to talk about power, and I want to talk about land because I think those are the three concerns people have about aboriginal people.

The first one I want to talk about is land, and this great European culture that they have to own everything. "I own it and therefore I can give it." Well, I live on the land that my great-great-great-great-grandfather lived on. You are not going to move me off that land. You are not going to give me that land. So we have to get rid of this concept that this is a land claim. It isn't a land claim, it's a settlement; a settlement of two different jurisdictions. There is a European jurisdiction that came here and there is the aboriginal jurisdiction over that land that has always been here. Please remove from your mind the European concept that you own everything and you can give it away. It's not possible. You cannot give me the land which my great-great-great-great-great grandfather passed on to me and I'm going to pass on to my great-great-great grandchildren. You will never give us the land, but what you can do is come to an accommodation of the conflicts in the titles that we have.

There is this term being tossed around about aboriginal title. Well, I even disagree with that term. Aboriginal title finds its place somewhere in the year 1034 back in France. So what did they know about the Nuu-chah-nulth people? What we have in our area is a name called Ha Houlthee, which is not aboriginal title. Ha Houlthee is very different from the legal term of aboriginal title. And you can't extinguish my title because it comes from my chief. You have to destroy us as a people if you want to extinguish our title. That is the only possible way to extinguish our title, to get rid of us as a people. If you really want to do that, let's get on with it. But that is the only way you can extinguish my aboriginal title.

You have another title under your Constitution. You have power sharing between federal and provincial governments. You have federal lands and you have provincial lands and it's those titles that are in conflict with our title. I remember an illustrious Premier who said that Indian people in B.C. want 115 percent of the land. Well, only a lunatic would say that. I was at a conference last year where this premier stood up and said, "Well, Mr. Watts, I want to know what the solution is? What can we do so that your people can become wealthy too and we don't need all these social programs?" I said, "Sir, I am going back home after reading the paper today. I'm going back home and I'm going to enrol all of my people in a school where they can teach us to buy and sell stocks at the right time and we won't have to worry about wealth. We will be all millionaires if we can guess when to buy and sell at the right time."

But let's talk about that statement because I see a lot of non-Indian people grasping on to it. "We can't settle land claims. They want 115 percent of the land and you know we have to live here and they are going to take your property and we won't be able to cut trees down because the Indians are going to have 115 percent of the land." But I have yet to hear one Indian person in this province say that they want all the land in this province under their thumb. I have been involved in this business since 1958 and I have yet to hear one Indian person say that they would not share this land with other people who live in this land. We have always said that we want to sit down and come to an agreement about how we are going to co-exist on the land. But this means that white people have got to understand that there has to be a third order of land in this country. There needs to be a final recognition that "Yes, there is a third order of land that aboriginal people will have for certainty."

Joe Mathias was talking about this issue of extinguishment. Why is there such an issue? Can't we live together without us being extinguished? Is that what you are saying to us? "We have to extinguish you before we can have ownership of this land"? Why can't we as Indian people have certain pieces of land under our jurisdiction and live next to you and you have yours, and have respect for where that land came from? I have yet to see a white person in this country say, "I respect this hereditary chief because I'm on his land." I have yet to hear that from one white person in this world. Yet, they talk to me about dignity and respect and religion. I've read the Bible; I'm not a Christian, but I'll tell you, there is a lot in that Bible which is a contradiction to the way people live in this country and the way they have treated us. My hereditary chief has roots that go so deep that you would never be able to dig him up, but I have yet to see one white person pay that man respect for what he is. Could you imagine if we treated your Prime Minister like that? Or your Governor-General? We would be thrown into prison, that's what would happen to us. So, what we are trying to say to you is that we feel very strongly about our ownership of that land, but we are in no way saying to you that we are going to chase you off.

My people are now engaged in starting to set out what it is that they want for certainty in terms of lands. We will be tabling that document. But don't come to my people and say "Well, we can't settle with you because you want 115 percent." In fact, I don't want a single acre where any of those pulp mills are sitting; you can keep them all, at least until you clean them up. But the truth of the matter is that every Indian group in this province is prepared to settle out lands that we want under a third order of land ownership in this country and to say to you, "Now you can co-exist with us with certainty." So let's get that one out of the way.

Even those lands which we own, we are not adverse to having some relationship with some of the corporate powers. I was talking to Adam Zimmerman last year. I said, "If you get a land claim settled, I might sell you some trees; but right now, you are not going to take a single tree off Meares Island because I have got a court injunction against you and you are not going to get anywhere. That court injunction is going to live at least ten, if not fifteen years, until the issue is settled. Go on over to Premier Vander Zalm and tell him to get on with negotiations—that might get you some trees off Meares Island. That's up for negotiation."

People have to understand that Indian people aren't saying you can't cut trees, or you can't mine, or anything like that. All we are saying is that we want a say about how those things affect our lives. All we have to do is go to that reserve in Ontario where people ended up dying with Minimata disease from mercury, and talk to their families about how they feel about not having control about the environment in which they live. All we are saying is that we want for certainty a creek that supplies our village with water. We want to make sure that nobody touches the water that we have to give to our kids. We are not saying that you can't have the river that is next to us for your purposes, but let's sit down and negotiate those things out.

I often wonder about people who are scared of negotiations. I'm not scared of negotiations. My people aren't. We will send the best people into a room to negotiate on our behalf, I guarantee you that. I guarantee that our people who will go into the negotiation room will be prepared for negotiations. What are you scared of? Don't you have anybody qualified to negotiate on your behalf?

Talking about that I want to get on to the second issue: money. Listen to these people. "Oh, Indians don't pay taxes." Well, I'll show you sometime exactly how much taxes Indian people pay. Indian people don't pay *some* taxes. But I saw the briefing note to Cabinet from the deputy minister of finance, his suggestion that we don't pay taxes. My father worked fifty-one years in this country and he paid every form of taxes to build this country. Let's get rid of that idea. Somehow people think, "If we settle land claims, all it is going to do is create a haven for Indians not to pay taxes." Well, if you are so concerned about it, put it on the negotiating table. I'll negotiate a taxation issue with you over land claims settlements, so that in the end we determine what it is. I'd sooner see nineteen- and twenty-year-old Nuu-chah-nulth people working and paying taxes than I would see them committing suicide on our reserves. So let's put it on the table and resolve it rather than allow it to serve as a boogey man. It wasn't us that wrote the Indian Act that put that section in the Indian Act. In fact, we didn't get to vote until 1960 so we had nothing to do with the Indian Act. It was your Indian Act that gave us that tax exemption. But I'm more than happy to throw it back on the table if you want to negotiate how we are going to co-exist in this country.

Let's talk about the money issue because it is an outstanding issue in this country. People say, "It's going to cost us billions of dollars."

But it's costing you in this country $4.5 billion per year right now to deal with the social problems of Indian people. Land claims are going to cost $600 million, but $4.5 billion is spent trying to deal with the situation of Indian people.

You have to put this thing into perspective. There is a tremendous drain on the economy of this country that is going to programs trying to deal with Indian people. We don't want it—keep it. What we want is some of our land back so we can provide for ourselves. Just think if we end up in the situation where I can go home and I can say, "89 percent of my people are working! It was only 11 percent a couple of years ago." You move up to that kind of percentage and you see those people contributing to a country. I live in Port Alberni; I spend at the most about 3 percent or 4 percent of my earnings on our reserve. The other 96 percent goes off reserve. Just think if you had a whole community of employed people what that would mean for local economies, for your municipalities. We can't just think in terms of the cheque going out of government. We have to think about what it really means in changes of flows of money in this country. I'm no economist, but I believe that if Indian people start to put back into their nations, they start to become strong nations and start to have strong economies, that it will do nothing but good for the economy of Canada.

The last issue that I want to deal with is power. Nobody wants to talk about power. It's verboten. It's something that we are not allowed to touch. You saw us at the constitutional table. We talked about everything in the world at the constitutional table except power. That's really what the constitutional discussions were supposed to be about; about power sharing. Now I know European people have a tough time giving up power once they have power; I'm watching it in South Africa. But eventually you have to deal with the issue. I want to be frank with you. No land claims agreement between the Indian people and the governments of Canada can be done without establishing the sharing of power because we happen to believe that you cannot rule over us for the rest of our lives. It's quite simple. We believe that as people—as human beings, we have got the right to govern ourselves. By governing ourselves and exercising our power, and by you recognizing that we have always had that right to exercise that power, it means that it is going to come in conflict with some of the present power that you have.

I want the power to determine what is going to happen on the lands we have for certainty. I want my people to be able to sit down and make decisions so that they can deal with the education of their children; so that they rather than the Superintendent of Child Welfare can deal with the future of their children. Those are the powers that we have to look at. Even a simple thing like bingo. There are a lot of non-Indian people in this province who are upset because Indians are saying, "We can hold a bingo." Whatever gave you the idea that we had to ask you if we could hold a bingo? "These damn Indians breaking the law. Who do they think they are?" Well, they are not breaking the law. They are exercising a power that they have always had and you can never give to them. What you can do is suppress the exercising of that power by throwing them in jail, and you have done it. You did it in 1927 when we tried to practise the Potlatch. You have done it on numerous occasions in this province. You have thrown us in jail for exercising our power and our rights. You can continue to do it, but it would seem to me that the mature thing to do would be to sit down with us and sort those things out so that we can all exercise our powers and our rights with certainty. I don't find that very threatening, but I think you might find it threatening if you see that you are going to have to give up some of your power. But I do not see Indian people and non-Indian people in this province co-existing unless we can sort out our powers. What you have to say to yourself is, "I can't give them the power; what I can do is recognize that they have always had the right to exercise certain powers." My tribal council is ready to deal with powers, and the first one we are going to throw on the table is Canada Post—you can keep it.

3

The Historical and Legal Dimensions

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Although the term "land claims" is commonly used today, it does, as a previous speaker has suggested, have a one-sided connotation. In the early history of the issue in British Columbia, the common term was "the Indian land question"—implying that there was more than one side to the issue and that more than land title was at stake. The issue, of course, has its beginning before European contact, when there were complex civilizations of high attainment in this part of the world. I have to confess that at universities we often refer to that time as "prehistory"—wrongly implying that real history began only when Whites arrived.

The actual land question, however, began the moment Whites began to arrive and to make clear that their intention was to take over the land. That intention was not evident in the earliest decades of contact, but it was a certainty by the time the first colony was established in 1849. Governor James Douglas became the key official. The instructions to him from both the Hudson's Bay Company and the British government assumed that the Indians did own the land. Indian title or aboriginal title was thus taken for granted. It was assumed that title would have to be purchased before white settlement could occur, and so the instructions to Douglas refer to treaties, although he is not explicitly instructed to arrange them. But he did go ahead and arrange fourteen treaties on Vancouver Island—in fact, we are on treaty land right now.

The treaties are interesting documents (among other things, they state that the lands become the "property of the white people forever," and thus raise some interesting questions about racial ownership today), but they cover only a small part of the Island. The real question is: Why did Douglas not continue with further treaties? The answer explains why British Columbia, to a large extent, does not have treaties to this day—and why the land question in this province is different from that in much of the rest of Canada.

The common historical interpretation is that Douglas, a generous man fully in support of Indian land rights, was prevented from purchasing more land by hostile white public opinion (that regarded Indians as primitive savages who could no more be thought of as owning the land than could the birds or the chipmunks), as well as by London's unwillingness to provide him with the necessary money. A further aspect of the common interpretation is that Joseph Trutch, who served after Douglas as Commissioner of Lands and later Lieutenant-Governor, was the evil one who did everything wrong and unjust that could be done to native peoples.

Let me take these aspects in reverse order. I'm no defender of Joseph Trutch. He was contemptuous of Indians, regarding them as ugly, lazy, dirty savages. He is not a man whom historians have regarded favourably. But even though he was the first to deny publicly that aboriginal title had ever existed, his actual policies began with Douglas.

As far as treaty money is concerned, the British authorities did refuse to provide it, on the grounds that it should be raised in British Columbia—but the necessary amounts were piddling. In the fourteen treaties, payment was made with blankets worth a few tens of pounds. The costs of treaties was simply not significant. For the things that mattered to him, such as the roads that would take miners into the areas of heaviest Indian concentration in the Interior, Douglas borrowed and spent enormous amounts. The money needed for further treaties would have been a pittance in comparison. Had he wished to he could easily have raised those small amounts.

The standard history is perhaps most erroneous in terms of white public opinion. There is very firm evidence that Whites in the early years did recognize Indian land title and did expect the government (that is, Douglas and the legislature) to purchase title before white settlement was allowed. Editorials in the *Colonist* newspaper again and again urged Douglas to get on with purchase of Indian lands. The legislature here on the Island passed a number of resolutions urging the purchase of the lands and, until 1864, allocated money for the purpose. Douglas did not choose to spend that money.

So what was Douglas up to? Little attention has been given to something that he himself made quite explicit—it was what he called his "system" for dealing with the problems Indians and Whites posed for each other. To understand Douglas' aims in his system is to understand the origin of the land question.

Douglas was a humane and reasonable man; he was no bigot. He could observe that Indians were not in a happy state; indeed the very Indians who had signed treaties here on Vancouver Island were in particularly unpleasant circumstances. All the things that befall societies under stress were in evidence: disease, social and family breakdown, violence, demoralization, alcoholism, and suicide. This was the reality that Douglas faced. In his view, the treaties had not been of any benefit to the Indians. They had lost their lands. What good were the treaties once the blankets had worn out? (The treaties, we should note, were essentially ones of extinguishment of aboriginal rights. Aside from some fishing rights, they did not provide for power sharing or other features that were mentioned this morning as essential to just settlements.)

Douglas' aim through his system was assimilation of the Indians into the dominant society, but in his vision assimilation would rest upon equality and dignity and would lead to Indian happiness and prosperity. Indians would survive individually, but not as cultures or as societies.

There were three elements in his system. One was conversion of the Indians to Christianity—this element he left largely to the missionaries. The other two elements are more directly related to the land question. The first of these concerned land pre-emption, or, to use the American term, homesteading. The great white hope of people coming from Europe was to get free land in North America. This was the great agrarian dream that is even today evident in some of our public policies. Douglas' aim, very radical for its time, was that Indians should have pre-emption rights. That they should have such rights was an essential part of his policy and a perfect embodiment of equality between Indians and Whites.

Indians, in short, would have the same land rights as the Whites. Now, obviously, this was to treat Indians as though they were immigrants in their own land. The principle of pre-emption under British law is that of acquiring land which has been previously held by the Crown with no encumbrances. Douglas was thus denying aboriginal title. If he had been in fact recognizing title, the Indians could not have been expected to pre-empt, as the land would have been theirs already and not something to be obtained from the Crown. The simple policy and practice of Indian pre-emption, in the absence of treaties, was a *de facto* denial of aboriginal title.

In addition, the process of pre-emption, which required individual families to live and farm on separate plots of land, was intended to break down the communal Indian cultures. However, in the 1850s and 1860s there were far more Indians than Whites in British Columbia, and had the policy been effectively implemented, our province's society would have become more bi-racial, like Mexico's. In any event, the vision that Douglas opened was one of equal treatment of Indians and Whites, but at the price of Indian identity and culture, and it was a flat denial in practice of aboriginal title.

The third element was Indian reserves. As most of you know, in the rest of Canada, especially on the prairies, the treaty process did continue—under the principles of the Royal Proclamation of 1763, with reserves laid out on the same acreage basis per Indian family as would apply to White settlers. In Alberta, for example, reserves contained one square mile, or 640 acres, for each family, which was the same amount of land that a white settler family would acquire in the treaty areas. In short, the prairie treaties produced large reserves—and a different sort of equality.

In Douglas' system, however, the long-term aim was to have Indians as freehold farmers. Reserves did not fit into the picture. In Douglas' view, reserves were simply to be half-way houses or way-stations between the present and the future. Douglas was thus not concerned about the size of reserves. There is some continuing debate over his exact acreage formula, if any, but he himself stated his basis principle as being no more than ten acres per Indian family (although there were examples in the interior of his allowing greater acreage). But the essential point is that he allocated only very small reserves—justified on the basis of future pre-emption. Indians would get their land by moving off reserves.

Reserves were not seen as a land resource for Indians. Of course, it was on the reserves that education and missionary activities would take place, but as a means of preparing Indians for their off-reserve future. Furthermore, Douglas made it very explicit that government officials would have the right to dispose of reserve lands. They were to do so for the benefit of the Indians, but the Indians themselves could not dispose of them—again, Douglas was denying original Indian land ownership.

In addition to these aspects of his system, Douglas evidently anticipated that Indians would have the normal political rights, including the right to vote. In Douglas' last speech to the mainland legislature before his retirement in 1864 (it was also his first speech, as the body had just been established), he devoted a good deal of attention to his Indian policies. He emphasised the right of Indians to pre-empt land, and he defended his policies from the white criticism that was now emerging. Yet he still refused to proceed with treaties, even though white opinion expected him to do so. His long-term plan, instead, was for a society in which White and Indian would share equally in land rights obtained from the Crown.

Douglas' successors as governor took little active part in policy making. This was the age of the emerging bureaucrat in British Columbia, and the most important of the bureaucrats from 1864 until Confederation in 1871 was Joseph Trutch. He was knighted by the Queen, became our first lieutenant-governor, and was John A. Macdonald's main political ally in British Columbia. He was important and popular, at least among Whites.

As for his Indian policies, however, Trutch simply made official what Douglas had left implicit. Trutch was the first to deny that Indians had ever owned the land. Douglas had never said this; he had simply acted as though there was no Indian title. Trutch's denial of title required him to carry out some historical revision—above all he had to explain away the treaties. In his view the treaties had been payments to stop the Indians claiming that they owned the land. Put another way, in Trutch's view the treaty payments had been bribes to stop the Indian foolishness. This interpretation became popular among government officials—to this day there is a certain element of it in the federal view that land claims settlements do not acknowledge aboriginal title, but, rather, serve to pay off Indians to stop claiming it.

Although it was in the arranging of Confederation that Trutch's accomplishments reached their greatest heights, several other steps were taken under his guidance. One of these was abolition of the right of Indians to pre-empt land. Douglas' great goal of equal land rights was shattered. The legislation stated flatly that no aborigine of this continent could pre-empt land. Suddenly, at the stroke of a new governor's pen, Indians lost their new land rights (that some of them, on a concerted tribal basis, had begun to exercise to protect traditional lands) and were now restricted to the intended half-way houses. Another of Trutch's accomplishments was to further reduce the size of many of Douglas' reserves; and he himself laid out reserves on a most ungenerous basis. A further step, almost simultaneous with Confederation, was removing the right of Indians to vote in provincial elections.

To understand Trutch's success in arranging Confederation, one must realize that there was no road or rail link to Ottawa. From Victoria one went south by steamer, east across the United States by rail, and north to Toronto and on to Ottawa. Few, if any, Ottawa officials had made the trip; they had little knowledge of British Columbia and even less of Indian policies in the colony. The federal officials simply assumed that the treaty and reserve policies followed by Canada in previous decades (especially in Ontario) had also been followed in British Columbia. Trutch did little to make the officials better informed.

The Terms of Union thus say nothing at all about aboriginal title—the Ottawa officials assumed it had been taken care of through treaties while Trutch assumed it had never existed. The Terms of Union also gave to the province a continuing control over creation and size of Indian reserves. In a very real sense, the Terms of Union are Trutch's greatest achievement.

To this point, in discussing what the white regime did or did not do, I've dealt with only one half of the beginning of the land question. The other part, equally important historically, is the Indian response.

In British Columbia there has been a substantial and sustained Indian response to the denial of aboriginal title. It goes back to the very beginning of white agricultural settlement, when there were local protests everywhere as the Whites moved in without having bought the land. One of the most substantial early responses came in the 1880s as the province attempted to survey land in the Nass Valley. In January 1887 a delegation of Nisga'a and Tsimshian chiefs came down from the north coast to meet with provincial and federal officials. Premier William Smithe met with them in his own living room—the likely reason for this odd bit of hospitality was to allow him to prevent missionaries from coming in with the Indians. I assume he thought that the Indians couldn't make a very convincing case without the Methodist missionaries, who, he was convinced, had given the Indians this idea about title in the first place. Smithe could not conceive that the Indians had ever thought of themselves as owning the land.

In that living room meeting, with one of the chiefs acting as interpreter and speaking fluent English, the Indians laid out four essential demands. The first was for recognition of title. The second was for treaties. Third was the demand for adequate reserves as part of those treaties. And, fourth, they demanded self-government on Indian lands. Finally, they wanted a public inquiry. These same demands have been the essence of Indian political expectations in terms of the land question from that day to this. There has been a continual Indian faith in public discussion as a way to resolve the issue. Even after a century, they haven't given up on this possibility.

Premier Smithe was not persuaded. He said to the Indians (and these are his exact words), "When the whites first came among you, you were little better than the wild beasts of the field." As I have mentioned, governments do not sign treaties with wild beasts of the field, and this notion had by 1887 become the official provincial basis for denial of title. But the government still feared rebellion (it was alleged that muskets had been waved about as the surveyors were sent packing down the Nass), and a public inquiry went ahead. The verbatim transcripts of that inquiry are still available. They lay out the Indian demands: recognition of title, arranging of treaties, adequate reserves, and self-government.

The inquiry commissioners simply denied the demands. They said that the Indians were rather simple-minded people, dour like the Scots, who wouldn't forget an idea once they got hold of it, but that the idea of title was not to be taken seriously. The commissioners' recommendations were to sent in Indian agents, police, and Anglican missionaries (since Methodists were not reliable).

In a very real sense, nothing has happened since 1887. The issues are still the same. The Province still refuses to acknowledge title. The Indians are still making the same demands.

I might have mentioned two major government actions on the land question since that time. Much land was "cut off" from existing reserves in the early 1920s, and this despite many solemn government promises. The Indians responded vehemently but peaceably. Then, in 1927, Parliament outlawed claims-related activity. That action put a stop to claims activity (until the 1950s, when the law was repealed), although the Native Brotherhood kept Indian ideals alive.

My closing observation deals with the aboriginal past. That past is not far past. One of the continuing strengths of the Indian peoples of British Columbia is their direct connection with the aboriginal past. In the Eastern part of North America that past is centuries past, with much disruption and discontinuity. But on the northwest coast there was even less disruption than occurred elsewhere in the west. Aside from the high Arctic, effective white control came last to this part of North America.

One particular family history illustrates my point. In 1887 a Nisga'a chief, whose English name was Job Calder, came down-river to the inquiry hearings in Kincolith, bringing with him his son Arthur. Job Calder's wife and Arthur's mother, the Chiefess Victoria, stayed back in the village—because of her high status, it was not appropriate that she would come to speak herself. Some years later, Arthur Calder played the key role in organizing the Nisga'a Land Committee, which helped keep alive the claims of all British Columbia Indians. Subsequently, Arthur's adoptive son Frank Calder became one of the great Indian leaders of this province. (I would identify four men who kept the claims alive while whites thought they were no longer relevant—Peter Kelly, Andrew Paull, George Manuel, and Frank Calder.)

Frank Calder is here today. We in this room are in direct touch with the beginnings of the Indian land question. The question is with us still.

Jack Woodward

Lawyer
Jack Woodward Barristers and Solicitors

Introduction

The questions I want to address and try to answer in the next half hour are as follows:

1. As a matter of law, what can the federal government do to settle claims?
2. As a matter of law, what can the province do to settle claims?
3. What can the Indian nations or tribes do to settle claims?
4. What can the courts do?

Once we know what each of the parties *could* be doing, it may be a little easier to figure out what they *should* be doing. There has been a lot of finger-pointing about the Province of British Columbia's inactivity with respect to settlement of native claims over that last 120 years. I'll touch on that, but I'll also touch on the actual legal rights which the other parties could exercise, if they have the political will to do so.

The Federal Power

There is no doubt that the Federal Government could settle B.C. land claims, on its own, without reference to the Province, if it had the political will to do so.

The Federal Government has already done some of that in B.C. The whole of Treaty 8 in north-eastern B.C., which was concluded twenty-eight years after B.C. joined Confederation, was a federal operation. In the course of concluding Treaty 8 in 1899, Canada did two things: firstly, Canada recognized the aboriginal title of the Treaty 8 tribes. Secondly, the Federal Crown accepted a surrender of that aboriginal title, in return for treaty rights and reserve lands. The Province was glad of that action, because it cleared the burden of Indian title from a vast area of provincial territory. But even though the Province was the beneficiary of that windfall, there was no need for the Province to be involved in the process from a legal point of view.

This illustrates the fact that the Federal Crown has two very important powers, with respect to Indian title. Firstly, the power to recognize it, and secondly, the power to accept a voluntary surrender of it.

The Crown's power to recognize title

From the very beginning, one of the powers which the Crown has always exercised is the power to recognize aboriginal title. An example of the use of that power is in the Royal Proclamation of 1763, where the Crown recognized the Indian title to most of North America. Another example is found in all the early treaties, in which it is typical for the Crown to accept a surrender of some of the tribal lands, and to recognize the title of the Indians to that portion of their lands which were reserved by the Indians from the surrender contained in the treaty. (That is where our word "reserve" comes from—the lands were reserved by the Indians from the act of extinguishment found in the treaty.) The power to recognize Indian title comes from the Royal Prerogative—that is, no Act of Parliament is needed. The Crown can officially recognize the title of an Indian nation in many ways: in a treaty, in a statute, or by Order-in-Council. Once the Crown officially recognizes title, it is assumed to continue until formally extinguished or surrendered.

Could the Federal Crown just recognize Indian title in B.C. and forget about what the Province thinks?

A radical move for the Federal Crown, but one which would be perfectly legal, would be for Canada to simply recognize the Indian title of the Nations and Tribes within B.C. The Province would howl, and sue, and threaten to secede, but that would not change the legal effect of the federal action. Just because B.C. would view the wholesale recognition of Indian title as unfriendly, doesn't mean it would be illegal.

It can be argued that the Federal Crown should do just that. The Federal Crown has a fiduciary obligation with respect to Indian lands[1], and the failure of the Federal Crown to provide a measure of protection for those lands is probably actionable.

Even if the Federal Crown would hesitate to do something so aggressive, a *threat* to do that would probably bring the Province running to the table. Perhaps, as a test of the federal power, the title to a particular area of the Province could be recognized. The Nisga'a lands, for example. Once the Province realized that by not negotiating, there was a risk that the entire Province could become one big Indian Reserve, the provincial end of the negotiations would start promptly.

It is important to note that the only thing keeping the Federal Crown from recognizing aboriginal title is political will, not any legal impediment. Of course, the Province will say that this is not so. The Province will say that the Federal Crown can't just recognize title without provincial consent, and without compensation to the Province. Canadian law and history, though, is not on the Province's side. It is a legal certainty that if the Federal Government decided to recognize title, the Courts would be bound to uphold that recognition despite any provincial protest[2].

Recognizing title is just like creating reserves

I mentioned Indian reserves. It is important to realize what Indian reserves are. Reserves are places where aboriginal title has been recognized[3]. There is no difference between the Indian interest in reserves and in aboriginal title lands. The Indian interest is the same in both cases[4]. What is different, is that in the case of reserves there is a formal recognition of the title. In the aboriginal title lands of the Province, there has been no such formal recognition.

One of the Province's defenses in the land claims cases presently before the Courts—Gitksan, Meares, Pasco, etcetera—it that Indian title was extinguished by the creation of reserves. In other words, the Province argues that by recognizing title within reserve boundaries, the Crown extinguished title outside reserve boundaries. As you can see from what I just said, this argument makes no sense. Indeed, the Indians can turn the argument around quite easily. Reserves, being places where title is explicitly recognized, are strong evidence of the existence of title in the surrounding tribal areas. Furthermore, most reserves were recognized by the Reserve Commission *after* Confederation. How could such reserves have been created if the general aboriginal title had already been extinguished in colonial times, as the Province is fond of asserting?

If outright recognition by Canada is in political never-never land, what is the more realistic role of the Federal Crown?

Short of using its overwhelming power to recognize title, the Federal Crown can do two things to bring about a resolution of native claims. Firstly, the Feds can provide some compensation to the unhappy Province for the apparent loss of land base. There is no obligation to do so, provided the Federal Crown does things correctly[5], but it would certainly ease the pain. Secondly, Parliament could establish a special Court with jurisdiction to hear and determine claims of aboriginal title.

A reversal of policy about who should pay for settlement

Official Federal policy is that the Province should pay Canada for the certainty of title which B.C. would receive from a negotiated settlement[6]. This is, of course, a ridiculous position for Canada to take. It is based on the unlikely premise that a settlement of claims will involve a voluntary surrender of title. Such a surrender is obviously not in the cards, except, perhaps, on a small scale. Most Tribes and Nations will elect to preserve their title, surrendering only portions if necessary. It is the Province, not Canada, which is on the hook when it comes to recognition of aboriginal title. The Province will be responsible to third parties, such as lumber companies and fee simple owners who will demand compensation for their loss of rights in Indian country. It is the Province which will need to be bailed out in the event of a settlement or a successful court case. Over the last 120 years, the Province has rashly alienated vast interests in the Crown lands, without making sure that the Indian burden had been properly extinguished. This could turn out to be the most costly mistake in Canadian history. Federal help for the Province is obviously needed, not payments from the Province to Canada.

A Court of Native Claims

The second useful thing for Canada to do is to establish a Court of Native Claims, or an Indian Claims Commission[7]. The Americans have had such a Court for more than one hundred years[8]. They have experimented, learned from their mistakes, and developed a system for the resolution of all types of claims. The American Commission has special rules of procedure and evidence, suited to this kind of litigation. The Americans invested their Commission with the power to make just determinations, regardless of the expiry of legal time limits, or other technical problems. Whether or not the American system is perfect, it is obviously better than our system. In order to establish such a Court, Parliament will have to recognize that the Crown is going to lose some cases, and that there are financial consequences to losing. The Americans have accepted that possibility, and have allowed tribes to litigate their claims to resolution, without technical impediments. The U.S. Congress has made payments of hundreds of millions of dollars, and has issued orders for possession of lands, all pursuant to the orders of the Claims Commission. Canada should follow the same course[9]. Such a Court or Commission would stimulate the negotiation process, for it would provide a realistic alternative to the stalemate under current negotiation policy. It would not be a mandatory process, but a useful option for those tribes unable to reach a suitable negotiated settlement in a reasonable period of time.

What can the Province do?

The Province is in real danger of losing one of the big claims of aboriginal title presently before the courts. If the Province doesn't lose the Gitksan case, it still has to face the Meares case. The Pasco case is still a few years down the road, but it, also, presents a formidable challenge to the Province. Some of the lesser known cases are equally dangerous for the Province. Consider the McLeod Lake case. In that case, the Indian band has a very convincing Crown document as evidence of their title—namely Treaty 8. Treaty 8 acknowledges the title of the Sekani people right on its face. But the McLeod Lake Band didn't sign the Treaty, so it may be that the Band will derive the benefit of recognition under the Treaty, yet avoid the extinguishment of title which the Treaty intended.

The Supreme Court of Canada, in various ways, has been indicating that when the correct case comes to Ottawa, there is a very strong possibility that the existence of aboriginal title in British Columbia will be sustained. In a recent New Brunswick case, the Supreme Court did away with yet another of the Province's defences. That was the defence of "complete dominion." The Province has argued that by occupying the Indian lands, and passing legislation contrary to the Indian interest, the Indian title was necessarily extinguished, even if not explicitly extinguished. The Supreme Court of Canada said that Indian title is "something more" than use and occupation, and that even if the entire use and occupation of the land had been taken away, some vestige of title remained unextinguished[10].

Surely by now, in the face of a mountain of adverse decisions[11], the Province is coming to realize that it is fighting a losing legal battle.

The conduct of the Crown, both federal and provincial, in these circumstances, is less than honourable. That is, to force litigation on Indian nations as the only realistic method of resolving their claims, is not in keeping with the relationship of trust which is expected to exist between the Crown and Indian nations. It is also a policy which is quite stupid. A loss in Court will be far more devastating to government planning than a negotiated solution.

Obviously, the Province should beg for a negotiated solution now, before one becomes impossible. The Province should seek federal help in this, but in any event, should not allow any opportunity to negotiate slip by.

What can the Indian Tribes and Nations do?

Because the federal negotiation process is obviously inadequate, the only sensible route open to British Columbia's Indian tribes and nations is to go through the courts.

What can the courts do?

This is one of those occasions in history when the Courts must be the conscience of the nation, upholding justice when elected governments cannot muster the political will to do what is necessary and honourable. The Courts of B.C., in particular, should place greater priority on the accommodation of native title cases, in order to speed them along, even when this is at the expense of normal commercial and private litigation. Until now, the B.C. Supreme Court has been reluctant to put aside more than one judge's time to these cases, where there is clearly a need for three or four judges to roll up their sleeves and deal with the backlog of cases now waiting in line for trials.

The courts have already made it clear, in the strongest possible terms, that the politicians of this country should get involved in serious negotiations[12]. If there continues to be a failure to negotiate solutions, the courts will have no choice but to impose solutions. The most likely solution the courts will impose is a declaration of aboriginal title.

ENDNOTES

[1] Guerin v. R., [1984] 2 S.C.R. 335, [1984] 6 W.W.R. 481.

[2] A.G. Can. v. A.G. Ont., [1987] A.C. 199 (P.C.). This same point was made by Mr. Goldie, lawyer for the Province in the Gitksan case—"Opening by Mr. Goldie" Transcript, page 154.

[3] Slattery, "Understanding Aboriginal Rights" (1987), 66 Can. Bar Rev. 727 at 743.

[4] Guerin v. R., [1984] 2 S.C.R. 335, [1984] 6 W.W.R. 481.

[5] See note on page 228 of my text *Native Law*, Carswell, 1989, for a discussion of the long history of federal bungling in respect of these dealings.

[6] Government of Canada, Comprehensive Land Claims Policy (1986), ISBN 0-662-55018-8, at p. 19.

[7] Using the power to create additional courts provided for under section 101 of the Constitution Act, 1867.

[8] Kenneth Lysyk, now a judge of the B.C. Supreme Court, wrote a good analysis of the U.S. Claims Commission, printed as pages 243 through 264 of Cumming and Mickenberg, Native Rights in Canada, 2nd ed. (1972).

[9] There is at least one precedent for such a Court, even within Canada. Prior to Confederation Ontario had a Commission empowered to settle native claims.

[10] *C.P. Ltd. v. Paul*, [1989] 1 C.N.L.R. 47 (S.C.C.).

[11] Cases which the Crown (federal and/ or provincial) has lost in the last six years, and which point to the continued existence of aboriginal title in B.C. include: *Meares* [1985] 3 W.W.R. 557, *Guerin* [1984] 2 S.C.R. 335, *Deer Island* 15 B.C.L.R. (2d) 165, the *Pasco* injunction 69 B.C.L.R. 76, the Westar injunction (part of the *Gitksan* case) 37 B.C.L.R. (2d) 352, *Saanichton* [1988] 1 W.W.R. 540, *Bartleman* 55 B.C.L.R. 78, *Jules v. Harper Ranch* [1988] B.C.W.L.D. 1886. There have been no significant losses, from the point of view of legal precedent, on the Indian side during the same period.

[12] I have collected some of these exhortations on page 112 of *Native Law*, Carswell, 1989.

4

Emerging Trends: Are Settlements in Reach?

Frank Calder

Research Director
Nisga'a Tribal Council

Yesterday, I was struck by two things. First, the young lady who was sitting behind me asked me, "Aren't you people frustrated with all these engagements, time after time?" I told her that 'frustration' is not a word in the vocabulary of Indian leaders since the Land Question began in British Columbia.

And second, George Watts, who had spoken in an earlier panel, indicated that he had read the Bible. I can understand why he read it; I believe that he was trying to understand the land question as recorded in it.

I, too, studied the Bible, but mainly about an oppressed people and the beginnings of global land questions. These people, who had lived for thousands of years in the Valley of Ur west of the Euphrates River, and who had been oppressed by a superior nation, had to seek aid by prayers.

When the good Lord noticed that His people were not able to stand any more oppression, He said to Abraham, "Gather up your people and your flock and I will direct you to the promised land." Well, it took Abraham several years of travel, settling here and there on the way, via the southern bounds of Turkey and then down towards the Mediterranean. However, the good Lord forgot to tell them that there were people already living in the promised land; whereupon Abraham and his people had to fight their way in. Thousands of years later, according to Biblical history, there was a similar oppression in the land of Egypt. And again the good Lord said to Moses, "Gather up your people and your flock and I will direct you to the promised land." Well, it took Moses and his people about forty years of travel, settling here and there on the deserts, via the Sinai and then up toward the select land. Moses, of course, died within reach of the promised land. However, the good Lord forgot to tell them that there were other people already living in the area, and so the new leader, Aaron, and his people had to fight their way through the Gates of Jericho and into the holy land.

Today, if you read the newspapers, you find that the descendants of the original people are still fighting their way in, i.e. into the West Bank and into the Gaza strip.

I will bet you, even after all these generations, these people were never frustrated and will never be frustrated, and eventually they will have a foothold in the holy land.

So, the struggle is endless, but I can grant you one thing: all the oppressed people everywhere today, who are dedicated to land settlements, will not rest until they have reached a just and final settlement respectively, and that definitely includes the Native Indians throughout the Western Hemisphere.

Of all the speakers yesterday, Dr. Paul Tennant, who has made a thorough study of the British Columbia Land Question, pointed out evidence that aboriginal title and rights have never been extinguished, that they actually exist today, and that they should be recognized by legislation and government policy. His talk was so realistic and clearly understood that it prompted me to alter my speech to you this morning.

The question that comes to mind following Dr. Tennant's presentation yesterday is, what have the Native Indians done, knowing that aboriginal rights and title were, in fact, there all the time? So I'm going to take you through an overview of what one Indian tribe did, that is, my own tribe, the Nisga'a.

The Nisga'a action emerged when surveyors first entered the Nass River about 115 years ago. My grandfather related this story to me when I was twelve years old. He was only a youngster at Old Aiyansh when the first surveyors arrived and erected their tent on the opposite river bank from the old village. It was near dusk when one of the local Chiefs ordered two young men to canoe across the river and find out what the White men were doing. The surveyors informed the two Nisga'as that the Queen had ordered a boundary line be drawn around the community of Old Aiyansh and that this was going to be done to all the Indian settlements all over the country. On their return the two men related the news to the Village Chiefs.

At sunrise the following morning the Nisga'as loaded every village canoe with fighting warriors, each carrying a Hudson's Bay musket, and proceeded to the opposite river bank. They approached the surveyors and, without any debate, raised their muskets and ordered, "Get off my land!" May I remind those of you who are currently oriented to the Indian Reservation System that the order "Get off my land" resulted in two historical impacts: one was the complete rejection of what is known as the Reservation System, and the other was the birth of both the Nisga'a Land Question and the British Columbia Land Question.

Not long afterwards another major action was taken by the Nisga'as.

It accrued from the several journeys to eastern Canada by one man, Charlie Barton of Kincolith. On one of his trips to Ontario he witnessed the benefits of Indian unity. He saw that as an organized group the southern Ontario Indians were able to meet with the governments and to arrive at some sensible dialogues.

On his return to the Nass River, Mr. Barton immediately called upon his good friend Chief Arthur Calder (later to be my foster-father) and informed him about the ways and means of tribal organization. Without hesitation Chief Calder began to organize the Nisga'as. With full cooperation of the chiefs and tribal membership the leaders of the four Nisga'a communities, as Dr. Tennant revealed yesterday, established the first Nisga'a Land Committee.

Eventful trends soon emerged. Following devoted studies of the Land Question, the Land Committee submitted in 1913 its famous Nisga'a Petition to the Privy Council in London, England.

The Land Committee then began a province-wide campaign to unite the B.C. tribes for a common cause. It culminated in the Spences Bridge Conference from which emerged the Allied Indian Tribes of British Columbia and its first petition to Parliament to settle the British Columbia Land Question.

In 1926 the Special Joint Committee of the Senate and the House of Commons was appointed to inquire into the claims of the Allied Indian Tribes of British Columbia as set forth in their petition submitted to Parliament.

As you all know from your studies, the Special Joint Committee of Parliament totally rejected the Land Question in 1927. The man who wrote that rejection was none other than the late Duncan C. Scott, the General Superintendent of Indian Affairs. The Indians had expected him to help their cause but instead he initiated the first real opposing trend that has remained to this day. Indian delegates Andy Paull and Peter Kelly later asked Mr. Scott why he wrote such a negative response. He replied, "I had no choice. If I favoured your rights and everything that you claim, I will have upset the very foundation of Confederation." These were not the exact words but they carry the sense of his answer. I particularly point this out to you because that negative attitude as developed then, is still here in many respects. It is a current obstacle. You even find it in the new Canadian Constitution and in the Government Policy for settling the Land Question.

Mr. Scott's response regarding the Land Question and his remark to the delegates have remained with me because of their resulting impact against the Indian cause. From 1927 to 1960 there was a complete doldrum. During that period Indians were forbidden to take up the question of land. Indians learned also that members of the Bar Association were ordered not to represent cases involving the Land Question. Even the Potlatch system and other ceremonial customs were denied existence. That is how bad it was.

Then on May 26, 1960, we returned to the positive trend. On that date another Joint Parliamentary Committee was prepared to consider amendments to the Indian Act. Of all the Indian groups that appeared before that Committee only two groups requested the reopening of the B.C. Land Question. One was the Nisga'a Tribal Council which I led along with my colleague Mr. Rod Robinson, and the other, the aboriginal Native Rights Committee of the Interior Tribes of British Columbia headed by my late friend, George Manuel. Much to both our surprise and gratitude the Joint Parliamentary Committee agreed to reconsider its position and to reopen the Land Question. In 1964 I then approached a young lawyer by the name of Tom Berger to represent the Nisga'a Tribal Council and its Land Question Case.

In 1967 during Canada's celebration of its Centennial the Nisga'as and Tom Berger were prepared to submit the Nisga'a case to the provincial court. As you all know we lost unanimously in both the Supreme Court of British Columbia and in the British Columbia Court of Appeal.

There was a slight hesitation in our submission to the Supreme Court of Canada due to the concern of other provincial Indian leaders that should the Nisga'as lose in the highest court of the land, it may end the Land Question in Canada for all time.

From this concern we began our study of the background of each of the nine judges on the federal bench. Along the way we were informed that one of the judges had provided a paper in which he stated that the land, as in the Bible, belonged to the Hebri. Whether the Bora Laskin paper existed or not, it made sense, and gave some encouragement. His supporting vote could mean a foot in the door and thus keep the door open for future court action regarding the Land Question.

As you may recall, the decision was handed down in 1973. And yes, the late Bora Laskin voted for the Nisga'a Case along with Emmett Hall and Wishart Spence. The three clearly indicated that the Nisga'as aboriginal title and rights had not been extinguished. It was a three to three judicial decision. The seventh judge refused to cast his vote because the Nisga'as were minus a provincial fiat.

The Nisga'a Case, better known as the Calder Case, was, in fact, a major victory in that Mr. P.E. Trudeau, the then Prime Minister of Canada, altered the Federal Government position to commence negotiations for land settlements. In other words, the Calder Case indeed had brought negotiations to the table to resolve the Land Question both bipartitely and tripartitely.

Although the three to three decision was an embarrassment to the courts, to the politicians, to the legal profession, and to the people of Canada, because the highest Court, the Supreme Court of Canada had failed to reach a more decisive decision, nevertheless I was content at least with the decision because as far as I was concerned it could be interpreted to mean co-existence, co-management, co-sharing, co-decision making, and co-economic developing. I just hope that my panellist colleague here, Don Ryan, wins his Gitksan case, because if he doesn't I fear that he may drag down the three to three decision with him.

The Nisga'a Tribal Council finally reached its ultimate trend in 1976 when it began the tripartite negotiations with the Federal Government of Canada and the Provincial Government of British Columbia (who later announced that its representatives will be there in the negotiation room only as observers).

Once again the old negative attitude of Scott's in 1927 surfaced its ugly head in the negotiation room in which for thirteen long years the two levels of Government displayed a complete lack of interest, policy-base, and progress; the province refusing to take an active part in negotiations and the federal negotiators appearing as a group without a mandate and appearing to employ delaying and stalling tactics. It was a wonder that on September 12, 1989 the Nisga'as finally signed the Framework Agreement with the Federal Government that guidelined procedures for final settlement within a three-year term. But since the signing of the Agreement the Federal Government has been most vague concerning the funding of the Framework negotiations for final settlement. Once the Agreement is signed by both parties, one would expect the Federal Government to fund its own negotiating team and that of the Nisga'as equally and sufficiently in order to complete the final settlement within the three-year period. But such has not been the case. If additional fundings are required the Federal Chief Negotiator, Mr. Fred Walchli and the Chief Nisga'a negotiator should approach the Federal Government together on equal grounds. The Feds should not favour one over the other in all financial matters during the Framework negotiations for final settlement.

Of all the components for negotiations such as fisheries, forestry, fish and wildlife, mining, economic development, etcetera, the Self-Government component is one upon which I now wish to express my own personal views. To begin with I am not too happy with the position in which we find ourselves. I refer to the Reservation System and to my opening remarks about the Nisga'a encounter with the surveyors at Old Aiyansh. Neither am I pleased with Indians being so oriented to the system. Prior to its existence the Indian people were free to roam their respective domains and to exercise their respective cultures within them. As revealed at Old Aiyansh, the system was coerced upon the Indians. There were no consultations concerning its introduction. Finally, the completion of the system only meant confinement for the Native Indians. Now, after hundreds of years under this system, the Indian people, without realizing, had developed a confined 'reservation' culture. The exercise of traditional freedom culture was no longer possible. The System had destroyed the progressive character of the Indians. Where once they enjoyed utilizing their hunting grounds the System took away their initiative by removing thousands upon thousands of square miles of their hunting domain. Where once they were independent to secure a way of life for their families they were made dependent upon the System. Where once they had pride, honour, dignity, and self-esteem, the System produced in them an inferiority complex lacking in confidence. The whole system breeds inferiority complexes, dependency, government paternalism and domination, and stalls the initiative. This is colonization at its best. It is apartheid at its finest, and both are calling for an emancipation of the Indian people. The shame of the reservation system has to be abolished.

If the ultimate in emerging trends in the Land Question has to be reached, then the System has to go. The Indian people must get off this Reservation mentality; they must get off this Indian Act mentality; and they must get off this Federal Indian Affairs mentality.

If the ultimate in emerging trends in the Land Question is to be reached, the Indian people must accept another avenue by which to exist as a free people and to administer their own affairs within the Canadian society.

If the ultimate in emerging trends in the Land Question is to be reached, the Indian people must consider the fee simple ownership of land and/ or other than the System, because they should never accept the Reservation land as a land base for Indian Self-Government. A truly acceptable Indian Self-Government can only be exercised successfully on a land base selected by the Indian people through their respective negotiators.

During my term of office as a Member of the Legislative Assembly in Victoria I had advocated the complete abolition of the Reservation System. I also wanted to provide another term for it in order for the share of the tax dollar to be returned to Indian communities whose residents have contributed millions of tax dollars annually to neighbouring towns and cities. In this respect I also advocated, on many occasions, a Provincial Municipal Status legislation for the B.C. Indian communities. The present Provincial Government accepted the proposal and passed it into law in the early 1960s.

During the four First Ministers Conferences the Federal and Provincial Cabinet members focused attention upon Indian Self-Government. So did the delegates of the Assembly of First Nations. However, the latter wanted it entrenched as an inherent right in the Canadian Constitution while the politicians rejected the move on the grounds it might result in an expensive third level of government.

At this point I wish to state my open support to the people of Sechelt for the success they have achieved in establishing the first Self-Government in British Columbia, making them the Fathers of Confederation in this respect. To me they are a bold, ardent, open-minded, energetic, and a well-prepared people. They know where they are going. They dared to abolish their local Reservation System and replaced it with a Fee Simple ownership. They so willingly said good-bye to the Indian Act and to the Indian Affairs Branch. Among other legislation they studied the Provincial Municipal Status. From their political analysis of the First Ministers conferences they agreed to proceed with their Self-Government without prejudice to their Tribal Land Question. They were not about to wait until doomsday for the entrenchment of inherent rights. From their knowledge of the Canadian Constitution they brought in the Provincial jurisdiction on Self-Government and subsequently brought in, at a later date, considerations of their Land Question resource components. The Sechelt people are on track. They now have a track record. And they are my kind of people.

I was amazed to hear criticisms from other Indian leaders concerning the route taken by the people of Sechelt. It must be known that the leaders there prepared their local Self-Government Constitution exactly the way they wanted it. It suited their community requirements on short and long-term bases. And quite rightly their Constitution is amendable. As they progress, flaws can be corrected. And finally, now that they are able to manage and administer their own affairs, they are seeking the resolution of their Land Question. These people have themselves proven to society that they can stand up on their own two feet with honour, pride, and dignity. Yes, there is a term to be reached in Emerging Trends; it is called Public Recognition, and Sechelt has proven that it can be reached.

I wish to conclude my remarks regarding another public criticism; this one from the general public. It was pinpointed by my late friend and family doctor in Prince Rupert a few years back. You can still hear it today. Referring to the Reservation system and to the settlement of aboriginal rights, he said "Why are you fellows fighting so hard for all these other rights? With all the money we have spent on you people, on the reserve, etcetera, literally millions and millions every year, aren't you people happy with that?" "Doctor," I replied, "you'll have to look at the government obligations to any confined people. The governments spend literally millions and millions of tax dollars annually for the upkeep of jails and penitentiaries throughout this country, and the governments are obligated to do three things to the confined inmates: to clothe them, to shelter them, and to feed them. When the governments coerced and confined the Indian people as Wards upon the Reservations, they were obligated to do three things: to clothe them, to shelter them, and to feed them. The Indian people had no say in regulating these government obligations. It was all your governments' own doing. Now 'these other rights' that you're talking about: they were taken from the Indians, and they now want them returned so that they can once again benefit from them. That's all."

My point here is that we are not asking for the moon. We only want a fair and just treatment. Up to now we have fought for and won several civic rights such as the Old Age Pension, the Family Allowance, Unemployment Insurance, medical attention, acceptance of Indian children into the public school system, the Provincial and Federal Franchises (vote) etcetera. We fought for these public benefits. The governments did not hand them to us on a silver platter.

Now we are fighting for recognition of our aboriginal rights and for Indian Self-Government, and believe me, we are going to achieve these goals, hopefully with your understanding and support.

Miles Richardson

President
Haida Tribal Society

I fully agree with Mr. Calder that as aboriginal peoples and understanding Canadians and peoples around the world, it is time that we 'go for it.' It's time that we resolve this too long outstanding issue that is important not only to aboriginal peoples and nations, but to the integrity of this young country of Canada. We certainly hope that all of the participants here make a commitment to take steps towards resolving this important question. We have been asked to speak this morning on emerging trends, on whether a solution is possible. I would like to offer some brief comments on that, in the hope of contributing to that dialogue.

Is a solution possible? Certainly, I think that we have to be optimistic, and in making all of these efforts, we have to assume that a solution is possible. We all know that it is going to take a lot of focused and determined effort above what has been done to date to bring it about, but certainly it is possible.

In terms of trends toward a solution, there are many; but certainly the oldest and the most important trend in resolving this outstanding issue is the determination of aboriginal peoples. As Frank Calder has made very clear, ever since contact and ever since the country of Britain, and subsequently Canada, began imposing its will on First Nations, our people have very determinedly stood up and stated the position of the world as we see it and the principles of rightness and justness that we saw should prevail in our relationship. That trend continues today in the increasing willingness of aboriginal nations to stand up in the face of doubletalk and hypocrisy, not only in the political but also in the legal system, to stand up for the beliefs and the principles of justness that our people have been pushing all of these years. That's increasing and that is very important.

There is very apparently a trend of increasing recognition by the legal system of the issues involved in this outstanding land question—this hasn't been the case in the past. In a lot of ways, it is a reflection of the determination of First Nations that the courts are standing up and increasingly recognizing that yes, there are very fundamental legitimate issues at stake here; and that the Canadian legal and political systems have been dealing with these issues in a hypocritical way such that in addressing them, the integrity of those systems is at stake. It's important that this trend of increasing recognition continue, and that the courts increasingly focus on these issues, but I don't think any of us expect that the final solution will lie there. These issues are very basic and very fundamental, and it must be expected that they will be resolved through reasonable negotiations between First Nations and Canada.

Another interesting trend that offers some promise of adding leverage towards a solution is the increasing concern over environmental issues and mankind's relationship to the earth, or at least to the parts that they live in. That's really at the heart of the concerns of First Nations; it always has been and will continue to be. It's an issue that is at the heart of our identity as peoples. With what is now happening in the world, there is potential for change. We have seen clear examples in the last few years of First Nations providing leadership and a cutting edge for change in dealing with some of these environmental concerns, against a political and legal system that has been very rigid and very reluctant to change. There is a real opportunity for those systems to be sensitively used together to bring about change. We see concrete evidence of that when we consider for example the forest industry in this province. There is potential for change, and there is great opportunity in following the lead of the First Nations in doing that.

Another trend brought about by the increased communication and education of people such as those participating in this conference is growing public awareness of the plight of Indians in this country. I know it is unacceptable to any reasonable people that this continue, and that situation is increasingly bringing a focus on the fundamental problems in the relationship between aboriginal people and Canada.

Those trends I have just noted all in a small way give us some hope and cast some light on possible solutions. The First Nations have a solidly demonstrated will to move toward a solution, but the conditions necessary to bring about a solution don't yet exist. I believe that for that to change, there has to be an about-face in the attitude and the policies of the governing institutions of Canada. The Canadian policy dealing with indigenous peoples up until now has been one of assuming Indian nations and Indian peoples are doomed to extinction, and that the only proper policy for dealing with such people is one of assimilation, or just letting them fall by the wayside as they will in response to the pressures that are brought upon them. That has to change; that has to turn right around, to an attitude that we as aboriginal peoples are human beings; that we will continue to exist as human societies and have the full right, according to international law, to perpetuate that. I know First Nations demand and will have nothing less. The policy of Canadian governments has to change from one of "assimilate or perish" to one of co-existence and sharing. We perhaps will never come to an agreement on who really in the most basic sense owns these lands and territories, but we have to come to an agreement on how we will co-exist and share our lives in these territories.

The changes that are needed to bring about the conditions for a solution are nothing less than that. It is easy to say them. It is easy to mouth them, but we have to raise it on the public agenda. We have to underline the legitimacy of those issues in both the legal and the political sense. We have to do what it takes to live as First Nations, according to our vision of our rightful place in our territories, and insist in an open and understanding way on contributing to the dialogue leading to a solution.

One brief moment that clarified that for me to a certain degree was during the Lyle Island court case, when ten of our people were brought before the Chief Justice of the Supreme Court of British Columbia. I sat with them through the months and days of the blockade on Lyle Island, and their conviction that Haada Gwai was Haida land, and continued to be Haida land, was very strong. With every bit of their being they believed that; and they also knew that our people had never made any agreements, treaties or otherwise, with Canada or with any other nation. It was a very difficult thing to hear that judge explain to these very self-respecting people that "as Canadian citizens you have no right to stand on that road." He saw it as stopping the legitimate right to log. Our people saw it as him saying that they have no right to stand and protect their land, which is their responsibility. That was a very difficult statement to swallow, knowing that the system and the laws that he is saying are intractable were enacted at a time when in Canadian terms, our people had no say at all; we had no vote, although for most of that period we were a majority of the population. We had no say in setting up this system in 1871 when B.C. joined Confederation; even in the 1960s our people still couldn't even vote in the process of setting up these systems.

This brought up a question of our relationship to Canada. All of these institutions, these laws and systems of tenure and such that we had been left out of, are just a democratic system transplanted from Europe, from a homogenous people; basically we were just left out. So what are we? Are we Haidas or are we Canadians? Is there any common ground? No, you either are or you are not; there is no half way. I know that it created some questions and a lot of hard feelings that some of us chose to make it explicit that we were outside of that system that had been responsible for a lot of the oppression of our people; but we realized that in order to bring about a solution it was necessary for us to take that position because without negotiations, without any compromising, there is no common ground.

I believe that a solution is possible. It's going to take a huge effort to raise it on the public agenda. The lack of seriousness with which politicians take this issue has to change and only we can bring it about—the First Nations, and people who want to make an effort to understand these issues. For the conditions to be acceptable, I believe that Canadian attitude and policy has to take an about-face from assuming that we are doomed to extinction and that assimilation is the only solution, to accepting that we are human beings and that we have a basic human right to perpetuate our culture; and also recognizing that the relationship of First Nations to their territories is an integral part of who we are. If we can come to terms with the fact that there is a place for all of us in British Columbia and Canada, and commit ourselves to a process of co-existing and sharing the richness of what is here, we can bring about a solution. In the meantime, we all know that it takes two to negotiate and that in the absence of the other parties sitting down, the rest of us have to 'go for it' and enact those values and principles that we know to be right.

Don Ryan

Speaker on behalf of the Office of the
Gitksan Wet'suwet'en Hereditary Chiefs

What I would like to do is cover some of the items that the Gitksan are doing and to demonstrate some of the trends that are happening in terms of the policies of the federal government and the provincial government in regards to these different activities. Today, I'm optimistic that there are going to be settlements in B.C. I say that because of some of the trends that are going on around the world. The Russians, for heaven sakes, are changing their constitution and we are still talking about Meech Lake. South Africa has freed Nelson Mendela; now we are waiting for B.C. to deal with the just claims of the Indian people. I'm predicting that there is going to be a major shift in the province this year, 1990. This is the optimistic side of me speaking now. You are going to see an announcement made on the issue of land claims in B.C. this year. It won't be because of the goodness of the heart of the premier or the cabinet, but because of all of the other pressures that are coming to bear on the government to deal with this issue.

The Gitksan took the risk as well. You heard from my Uncle Frank in terms of the Nisga'a court case. I spent years going through those documents, going through the statement of claim that they filed in 1969, the decisions of the Supreme Court of B.C. People should read what that man said to us in that court case. Those documents reveal the attitude of the government and the courts in regards to Indian people. It's racism; there's no two ways about it. So, what we have done with the Gitksan case is to see if we could change that; hopefully after that last twenty years, the courts are going to say something different.

The Gitskan case *Delgamuukw vs. the Queen* is wrapping up. We are going into the final arguments in April. It will take us three months to do those final arguments, then we do the reply, and then the case closes. The Chief Justice has said to us that it is going to take six months for him to write the decision, so maybe at Christmas we will find something under the tree; or we might have a good new year in 1991 in terms of the decision from the court. It will be really interesting to see what he has to say, compared to what the Chief Justice said to my uncle and their people several years ago, to see if there is any change.

The trend for us is to attack the whole notion of self-government the Canadian government has put forward, the whole notion that they build self-government on their terms of understanding of aboriginal rights. The whole notion of aboriginal rights under Canadian law is wrong. We continue to attack that because it is narrowly defined. It isn't our fault; you have to look at your own history to understand what "aboriginal" means and why it was applied to us in the Americas.

We are negotiating with the federal government on alternative funding arrangements. Again, that is block transfers, similar to what you have in equalization payments and transfer payments between the provinces and the federal government. We have tried to take those types of negotiations to that level. You saw what the budget did, what it did to us here in B.C. and what it did to us in the AFA negotiations.

We are involved in the issue of self-government; we signed the framework agreement on self-government. Those framework agreements aren't significant in our eyes; we characterize them as an agenda to determine who buys the coffee at the meetings, because the federal government isn't prepared to deal with the real issues at the table. They have identified several issues in self-government, but the federal government isn't prepared to deal with the real issues because for one thing, they say self-government is not an inherent right. They say that to our faces. We sit across the table from them and that is what they say. We went to a meeting with Kim Campbell, and that is what she said to us. "You don't have any inherent right to governing, so we are going to give you guys self-government." It's got nothing to do with self-government. The program itself is called Indian Government Arrangements, but they call it self-government.

The fact is that there is no government in Canada that can give self-government to the Indian people. The only thing that you can give is the right for our legislative authorities to interact—that is the consent that we have to have from the government of Canada. That is what the negotiations are doing right now, to see how you could link the legislative authority that we have with your government. That's what we think the negotiations are about.

I'm hoping that the federal government and the province deal with this issue properly. The province of B.C. has a policy on self-government. The federal government has a policy on self-government, and we have our own notions of it as well. The problems that I see happening, that are emerging here, are with what they call the dual bilateral process. We can sit down and deal with the federal government on the table, and then we go to the next table and we deal with the province and deal with the issues that are of concern to them. The two tables are in isolation from each other. We have been trying to bring those tables together so that we can at least deal with some of the issues that are coming out in terms of the legislative right that we have. They cover many different areas, but the point is that there has to be some movement made to bring those tables together.

There has to be a movement made by the province to get involved in self-government in an active way. They told us when we met with them last year that "as soon as you people sign a framework agreement at the federal government level, then you guys can come and see us." Well, we have signed the framework agreement, now we want to see some action. But I keep getting the run-around from the province. We have written to the people in Native Affairs; we have written to the chairman of the Cabinet Committee on Native Affairs. Both of these groups are telling me that the only place I could go to is the Premier himself to get some action, because of the statements that he made when he decided to stay on. All of the policy issues now are being focused and channelled to the Premier's Office and the Premier himself, so now we have to tell him to get on with it. Where are they today? The province was supposed to be here today, to give a statement on how they are going to deal with the issue of just settlements.

This brings me to the next issue in terms of the comprehensive claims. I predicted earlier that there is going to be movement on that in the province this year. We have been putting pressure on the federal government and the province to deal with this issue, and we have used the litigation route as one way to put pressure on them; the other is the direct political action that we have been involved with. The federal comprehensive claims policy as it stands is wrong as well; it doesn't deal with Indian interests, it deals with provincial and third party interests. Some of you who have been involved will know what I mean. There has to be some movement in that area, and it takes a lot of effort to change policies. The strategies that we carry out to try to initiate that action require a lot of support from people.

Comprehensive claims and self-government and the AFA—all of these initiatives coming from the federal government confine us to the reserve. It's got nothing to do with our traditional territories. We are confined to the reserves again. I'm predicting that this year the province and the federal government are going to come forward with a compensation package, and we need your assistance. We need your help to put pressure on the province and the federal government to come clean on this. The rumour is that the federal government is going to be responsible for 90 percent of the cost, and the province is going to take 10 percent of the cost. The ideal situation, I understand, is that they are going to move toward 50:50. On the table as well, will be the issue of land selection.

It is the same theme as the reserves. We are going to get a few more acres and a few more hectares, depending on our original allotments in the commissions in the last century and this century. That's what you are going to see. It's going to cost in the neighbourhood of around six to eight billion dollars. Again, this is only rumour, but what we need is people to put pressure on the government so that this comes out. We need a statement from the opposition in the province. We need a commitment from the Premier himself on this issue.

The trend is that we are confined to the reserve; we are told that we don't have any right to govern ourselves because we didn't have that in our system. Indian people are told that they never had any governing systems. You could see that in the policy as it is expressed right now in terms of how they have separated self-government negotiations and the comprehensive claims negotiations. One of the reasons they are separating them is that the modern land claims agreements are protected by the Constitution, and self-government is not. So, now we are trying to link self-government and comprehensive claims, so that they are protected by the Constitution. These trends are important for the public to appreciate. As I said, the whole notion of aboriginal rights has to be redefined. What we are doing in the court case is to force the judge to take a look at that. In fact, if you look at the statement of defence from the province and the federal government, what they are telling the judge is "don't rule on this because what they are really after is sovereignty." What we say is, "What is wrong with that?" Self-government is the same thing. They are not prepared to talk about the issue of sovereignty. We are not supposed to use the S-word. And we are not supposed to use the Royal Proclamation word—the RP word—so we have all these types of taboos in the discussion.

There is a great huge backlog within the Department of Indian Affairs, Justice, and all the central federal agencies now, because they are reacting to what we are doing. In fact, we already have draft legislation prepared that we are going to throw on the table, just to see what they would do to it. But they are not prepared. The whole system, the whole process of negotiation, is wrong as well. You just can't get the action or reaction from the different central agencies. There are just too many people involved. Even if we put the timelines in place, you can't meet them.

Frank Calder said earlier that the government was withholding money from the Nisga'a. We can't do it the other way; we don't have power to stop the money. That's where you come in. You can stop the money from going to these people who are wasting your tax dollars fighting us. They will cut off the money to us because the agreements now are set up in such a way that you have to be productive in order to trigger the cashflow. Now, if you could apply that same principle to the government officials, that's what we want. We need your help. People don't care; for many it's just another job.

I'm optimistic that something is going to happen. On the other hand, I'm telling you about the reality of what we see on a day-to-day basis because we are involved in all of these different activities, as a way of explaining to you what our experience is in these different negotiations. So I see the federal government moving on comprehensive claims. The deadline for the CYI, the Yukon people, and the Dene-Metis people, in the Northwest Territories, is March 31 of this year; as soon as you have those people initially reach an agreement in principle then you are going to see some movement from the federal government to initiate three new claims in the province. Again, because of the federal policy that you have in the land claims policy, the federal government can only negotiate with six claimant groups at any given time. Given the number of claimant groups there are in the province, you will see that none of them are going to be finished until the year 3000. That's the policy reality. That's the trend. That reality brings me back to the things that I'm going to say by way of my conclusion.

Given this whole experience, what we are saying is that we are prepared to negotiate. We have spent millions of dollars fighting you at all different levels, but we are still prepared to negotiate. We are prepared to sit down and deal with it. In the meantime, if you are not prepared to do that, we are now doing what we call direct political action. If we are successful in denying third party interests to people like Westar, we can then go in and develop that area ourselves in a different way than you normally see in terms of how the government is running the province and how they are managing the resources. We are prepared to do that. Again, I ask for your assistance because we need that type of help from groups around the world to do this direct political action because the government fails to deal with us. We have no other option but to create our own initiatives so that we can deal with issues at home in a meaningful way, so that we are not dependent.

I'm not just going to sit around and wait for us to sign the AFA, or the land claims settlement in terms of the cash settlement. We are prepared to deal with different things to make things different for our people so we are no long dependent. We are looking at direct political action. We are doing that in forestry; we are doing that in the fisheries; we are doing that in the area of taxation. If you come to our area in terms of the GST, we will have a flat rate of 2 percent, and if you live or work in our area, you won't have to pay income tax. We want to see how the federal government reacts to that. So, direct political action is the trend that I see happening. It's a major trend and it isn't just us. That is happening throughout the province; it's happening across the country. That is going to be really exciting because I think it will be successful.

Tom Sampson

Chairman
First Nations of South Island Tribal Council

I want to begin by first of all saying that I had an opportunity last summer to address the Western judges of Canada and to give them an opinion about what aboriginal people are about, at least in our particular area. One of the judges said something very important, that I think is worth repeating here. He said, "to know where you come from is to know where you have to go." That is important in the sense that we know who we are from the beginning of our time, and we knew when colonization came. What we are really dealing with is a system of colonization that hasn't changed in the last several centuries, at least as far as Canada is concerned. That mentality exists and is getting stronger. So to know who we are and to know where we are going is, I think, an important statement made by a European because surely in a country that he came to and saw the people here, he had some ideas.

Colonization, I think, is one of the most devastating instruments that is ever used by countries around the world to control a group of people. You have seen it other countries. I don't have to tell you about that. But one example to give you an idea what colonization is about is the issue of the Donald Marshall case. Here is a colonial system of justice that completely devastated one human being that we know of. Right from the arresting officer to the highest officials in that province, including the Canadian government, conspired to punish a human being through its system.

I'm trying to give you some history here because history tells us something. History says to us, "This is what happens if you look after your country." History tells us, "This is what happens if you look after yourself." Someone said yesterday, "We can't turn the time back." Unfortunately, there are people that think that way. But just imagine for a moment, if you can flash your mind back for a second, what this land would look like if we could go back one hundred years. There is nothing wrong with thinking like that because the land we call Mother Earth has always produced for us. It has never stopped producing. There have been many, many efforts to destroy it. Just as recently as yesterday, there was another spill up the Fraser River, killing probably millions of fish.

The colonial-type governments and the colonial-type attitudes that still exist at this moment really are frightening. I believe that the emerging trends towards the freedom of our people, towards the right to be free in a land that belongs to us, is what this issue is all about. We as aboriginal people who originally administered this land, have no say in it anymore. The emerging trends in Canada are becoming more clear, and Don Ryan's closing statements are a clear signal of that fact: either change or things will change for you. It's almost as simple as that. We are not like little trained animals that you can put in a cage, and every time you drop food down to us, we run for it and eat it. We are not like that. There have been a lot of attempts to treat us that way, but they have failed.

I think the emerging trends really have to begin from the inside. The only place I can go to you today is to your inside, to the inside of your heart, to ask you "what do you feel about me?" Do you believe that I'm going to take your house away from you? Do you honestly believe that I'm going to take your car away? Do you honestly believe that I'm going to steal your children, as you have stolen mine? Do you honestly believe that I'm going to do that? Ask yourself that. Do you honestly believe that I'm going to take your Christian religion away from you? Do you honestly believe that if I get control of my life you people are going to be out of jobs and that you are going to starve to death? Do you honestly believe that? Ask yourself that.

One of the things that I will say in terms of the emerging trends starts from some of the court decisions that have been made. Judge Dixon, a Chief justice of the Supreme Court of Canada, stated very clearly in regard to some of our tribes in this country that the treaties are both international in flavour and domestic in flavour. He also said that it is time that the governments, the people of this country, begin to give it characterization of some kind. This judge is saying, "Look, you politicians, you leaders, whether you are federal or provincial, it's time to change. The courts are inviting you to change." This means that we must sit down at the table to begin to give this country some characterization of some kind. We have to now introduce the ideas that our people for so long have been describing to you, from the time of the Nisga'as first intervention on behalf of their own tribes as well as our tribes. It has always been there. Even from the early times when we could barely speak English, we intervened and we began to say, "No, you can't do this."

I believe that the emerging trends I see are showing up in Canada all over the place. The Mohawks are clearly saying to the Government of Canada, "You can no longer rule in my territory. You can no longer say these things are right because we know that you are wrong." There is sufficient evidence in this country that this land is being administered improperly. I mentioned Donald Marshall as one case where the leading politicians, and right from the leading politician down to the arresting officer, are hell-bent on destroying our people; or take the situation in Manitoba, the murdering of an Indian leader. This system has failed. I believe that if this country is ever going to deal with the issue of aboriginal people, and deal with us fairly, that you are going to have to do a lot of thinking. I'm not trying to insult you by any means; I'm trying to say to you that it is time that you really took a look at what the situation is all about.

The other thing that I think we all should be aware of is that we have many, many dissenting bureaucrats in this country that now work for some of our people. They are always trying to tell us, "You are going to be assimilated and you are going to disappear from the face of the earth." We have had almost five hundred years of that kind of storytelling and we are still here. I'm pretty sure that for the next five hundred years some person is going to be standing at a podium saying the same thing. I will not disappear. These bureaucrats who have now infiltrated our system have caused a lot of dissension in our tribes. Whether they were in Fisheries or Indian Affairs, or wherever they were at, they couldn't get along and they became tattletales to the system. There are other groups of people who have disturbed our communities; religious people, administrators, former politicians, and lawyers.

5

What Can the Federal and Provincial Governments Do?

Frank Cassidy

If we are to have just settlements with regard to the aboriginal land question in the province of British Columbia, the kind of issues which need to be addressed are becoming quite clear. When the federal and provincial governments go to the negotiating table, it will have to be with regard to the principles of accommodation, diversity, equity, consultation, openness, integrity, certainty, fairness, and immediacy. Most importantly, the federal and provincial governments must have regard for the principle of recognition of aboriginal title and aboriginal rights in a broad sense. Such recognition cannot come at the end of the land claims negotiation process; it will have to be the fundamental principle upon which negotiations are based. Non-aboriginal British Columbians have to recognize that we have First Nations in this province who hold title, under their own system, to the land, and who have the right to govern the land and themselves in the broadest sense, under their own laws. If there is that kind of recognition, then maybe we can reach the kind of accommodation that we need to reach and establish the kind of common ground that we need to establish.

We have to get around the whole idea of "land claims" as such, because claims is a very misleading word to use. Although there are claims on both sides, the implication is that the aboriginal people are claiming the land that currently belongs to someone else, but what we really have is a dispute or a difference about who has the rights to the land, who has the rights to the resources, who has the right to govern. We are really dealing with a land *question*. What we need are negotiations and discussions around the land question, negotiations and discussions based upon recognition.

As we do that, we need to realize that there is tremendous diversity among the First Nations in British Columbia, and that different First Nations will be wanting very different kinds of accommodations. We are not going to be able to simply say: "This is what will happen in every part of the province." It will vary from region to region. We can try to get around accepting this fact of diversity and say: "Oh, that is something we just will have to put aside; it isn't practical." But diversity is a reality. If we don't accept it in the beginning, and if there is to be a successful end to negotiations, we will have to accept diversity in the end. At the same time we are also going to have to accept the central importance of equity and of fairness.

It's clear that the first thing the federal and provincial governments should do after they have announced recognition and established a basis for principled negotiations, is to enter into a period of consultation with publics across the province. The openness of the process is fundamentally important. Right from the beginning, the federal and provincial governments are going to have to go out and talk with people, with third parties, with all the interests; and, very importantly, go out and talk with the First Nations. There are important, very difficult decisions to be made about the way in which negotiations will take place. When negotiations do take place, there will be important and very difficult decisions to be made about settlement agreements. When settlements take place, they will be the premise upon which very important and difficult decisions are made about the future of everyone in this process.

Simple recognition of aboriginal title by the courts or even by the government in its broadest sense will not be the answer; it will be the beginning of the answer, a basis upon which the answer will be put forward. So the federal and provincial governments should very quickly enter into a period of consultation with people, a period with definite deadlines of up to thirty or sixty days. The more of this process that can be taken into the open the better, particularly in discussions of the form that negotiations will take, and what issues are to be included in negotiations. There needs to be public awareness and acceptance of what is going on. The public needs to be educated and involved in a meaningful way. Labour has to be involved; industry has to be involved; environmentalists have to be involved; municipalities have to be involved. There needs to be an open process where people are talking to one another, defining the issues and the roles that they would like to play.

Another issue to be addressed is funding for negotiations and for research. Not all First Nations groups, for example, have done the same amount of research on land, resource, and jurisdictional questions. Some are going to be more ready to reach the negotiating table and have thought more deeply about the positions they will bring to that than others. There needs to be proper funding for research and preparation, and the way in which that funding is given out is very important. Currently, for example, the federal government's self-government program gives out funding in small parcels; if you do something with which the government agrees, you get another parcel of money; if the government agrees with what you do with that, you get another parcel. As the government gradually absorbs First Nations into its own way of thinking, they get more money for research. If it doesn't do so, the money for research is cut off. That is not the kind of funding process that we can use for land claims negotiations and research in this province.

We have to have a funding process that allows people the integrity of making their own decisions about their research priorities. We can't have a funding process which is controlled by tightly held strings. There has to be a very clear promise to First Nations that funding is available to do whatever research and analysis is necessary to reach just settlements. If that research isn't done, then the problems which need to be addressed will gradually come up through the negotiating period. That is one thing that is fundamental, and that the federal and provincial governments should realize: the problems surrounding recognition and mutual accommodation won't go away. The issue is not whether, but when they will come up and how we will address them. If we don't address the questions of First Nations governance and land management at the beginning of the negotiation process, they will come up in the middle of the process; if they aren't addressed adequately in the middle of the process, they may stop the process from reaching the kind of positive end that it should.

One particularly difficult issue is the format in which negotiations should take place. We have many First Nations in B.C. who ultimately are going to want to negotiate agreements with the federal and provincial governments. Can we have one set of negotiations at the provincial level? Can there be what some people call umbrella negotiations? One option, as we go to the negotiating table, would certainly be to have provincial-level negotiations, which would essentially mean that there would have to be somebody to represent all of the First Nations and to negotiate on their behalf with the federal and the provincial governments. There are some obvious advantages to such an approach. A nation-by-nation approach would be very time consuming; all nations couldn't be involved at once, so people would have to queue up. There would be a lot of delays. There would probably also be some immediate financial advantages to carrying on umbrella level negotiations, but as experience has shown elsewhere, it would be very difficult to have negotiations only on a provincial level, because of the diversity among First Nations. There is diversity not only in traditions, needs and desires, and aspirations concerning land claims; there is diversity in terms of how ready various aboriginal peoples are to come to the negotiating table and to talk about a number of the issues.

Another option is to have regional negotiations, starting with framework negotiations on a provincial level that will establish basic parameters in a very general way, after which a number of complementary regional subagreements can be negotiated. This process would recognize that there is no way all the issues can be solved in provincial level negotiations. Although it would have the appeal of recognizing the diversity of First Nations, there may be problems with this option, because those involved may get caught up for a very long time in talking about what has to be negotiated rather than actually negotiating.

A third option would be to have several sets of First Nation-to-government negotiations, and not try to have provincial level negotiations. This is an option that people should consider very seriously. For many First Nations, this would be a very desirable way to proceed but, given its current policies, the federal government would probably want to set up no more than three sets of concurrent negotiations. So, which three go first? And what do the other claimants do while they are waiting? These are not the only questions which need to be answered. Do the first three settlements set the parameters for all the rest? Is it reasonable to think that after the first three go to the negotiating table and reach some kind of agreement, that the next groups are going to be able to negotiate fundamentally different agreements? Will there be some kind of model established? The nation-by-nation negotiating model could be the best option in the long run, but these are some of the questions that should be considered.

A fourth option might be to have negotiations based upon various kinds of groupings, such as geographical or issue groupings. Negotiations could be centred in various parts of the province; negotiations that were centred in coastal areas might be addressed in one way and those in the interior might be addressed in another way. Again, the same pros and cons mentioned earlier about grouping negotiations together versus bringing negotiations down to a First Nation-to-government basis would come into play here; but this might be one way to focus on certain kinds of issues, to carry out negotiations on a very broad basis and at some point bring them all together.

These are the kinds of options that should be investigated by the federal and provincial governments in a period of consultation with third parties and First Nations, that should take place immediately after recognition of aboriginal title and the decision to go to the negotiating table. The decision about the form of negotiations cannot be made by the federal and provincial governments alone. This decision has to be made on the basis of consultation with *all* the interests in B.C.; most importantly, this decision cannot be forced on First Nations. These questions should be asked and debated openly. It should be recognized that there is relevant experience in the Yukon and in the Western Arctic. There is also relevant experience in the Northwest Territories and Quebec.

I don't know if these are the only options that we need to look at or even how feasible they are. Some of them have advantages, some of them have disadvantages. We need to have discussions about how negotiations should be staged and about the involvement of various First Nations. Let's put aside the discussion of whether or not the Terms of Union abolished aboriginal title. We know that the Terms of Union did *not* abolish aboriginal title, that there hasn't been extinguishment in B.C. The courts have told us that over and over again. The historians tell us that. Why are we still debating that issue? Let's debate the real issues that should be on the table. Let's talk about the shape of just settlements.

There is a federal government package that has been negotiated, with some significant differences, around the country. That package combines money, the recognition of certain land holdings on the part of First Nations (for example, in the Yukon the First Nations, according to the current agreement in principle have retained about eight percent of their traditional land), ownership of certain kinds of resources, and the recognition of special rights over various parts of the land. It involves self-government and it involves various economic development opportunities, and guarantees related to them. Those are the kinds of provisions that tend to be in land claim settlement packages, and that we have to explore in the context of diversity and the legitimate differences among First Nations across the province. It may well be the case, for example, that First Nations who have as part of their reserves valuable land for economic development will want very different kinds of settlements than First Nations who have very small amounts of their traditional lands retained in reserves, or don't have great economic development opportunities. There must be the potential for different approaches among different First Nations.

It is quite possible there will be a lot of pressure on governments to turn the settlements into strictly money settlements. There will probably be much more interest generated regarding that posibility in British Columbia than elsewhere, because a great many people are concerned about control of the land and the resources. Throughout the process, people will be talking about tradeoffs between money and land. This is another issue that will have to be put out on the table. Of course, there are going to be objections to the whole idea of trading off money and land, but these are some of the things that are currently being discussed behind the scenes that need to be brought out into the public and that people need to be speaking about.

One of the big issues in reaching just settlements involves the role of self-government in relation to post-settlement regimes. In Yukon, self-government has been split off from the main agreement and is being dealt with in an associated but somewhat separate process. In that case, self-government is defined as community level self-government, rather than what many First Nations in B.C. may, in a much broader sense, define as self-government. For these First Nations, self-government extends not only over communities but also in relation to natural resources and land. We need to look carefully at what we mean by self-government and how it relates to land claim settlements. Again there are many questions. Will the federal government's self-government community negotiations come into play in B.C.? Will we have two closely associated but somewhat separate processes? Or will self-government be rolled into the overall general agreements? There are a lot of implications in the answers to these questions, and they certainly are something that all parties are going to be interested in; municipalities and economic third parties are certainly going to be interested in the scope and limitations of aboriginal self-government, and it goes without saying that self-government is a fundamental issue for all First Nation governments.

Another issue that will have to be addressed, if we are to have just settlements, is the issue of who is going to pay. Who in the long run is going to contribute the tax money to pay for land claims settlements? Who is going to contribute the land and resources required? Too often the issue of who is going to pay stops people from thinking about some of the other real issues. This is unfortunate. Land claim settlements are in the interest of every British Columbian. In the long run, land claim settlements will establish the kind of sharing, the kind of common ground, the kind of mutual understanding, the kind of certainty that will be healthy for the economy, healthy for communities, and healthy for British Columbia; but in the short run, somebody is going to have to pay for those settlements.

There are many, many other kinds of issues that need to be discussed in public. We need to start such a discussion with some basic principles in mind: the need for recognition, the need for openness, the need for consultation, and the need for fairness. We need to look at the shape of settlements and what will happen after settlements. These are the issues that we need to be debating now in British Columbia. These are the issues that we needed to be debating yesterday in B.C., and that we will be debating tomorrow in B.C. We have to prompt the federal and provincial governments to help us meet the real issues of today, to stop worrying about yesterday's problems and to get on with today's problems and tomorrow's challenges. We need to get on with building the kind of British Columbia that we want to have: a British Columbia that is built upon recognition, accommodation, and sharing.

Chris Knight

Chief Negotiator, Land Claims Secretariat
Yukon Territorial Government

I would like to tell you about the Yukon process—what we did and what we learned. The Council of Yukon Indians Claim was accepted for negotiation in 1973. In 1984, an Agreement in Principle failed to get the necessary ratification prescribed by the Government of Canada. In 1987, negotiations resumed under the new Comprehensive Claims Policy and with a specific Cabinet mandate. Between October 1987 and November 1988 we negotiated an Agreement in Principle which was ratified in 1989. Here is how it was done:

A little factual background first. The C.Y.I. represents approximately six to seven thousand Yukon Indian people from five different tribal cultures: Gwitchin, Southern and Northern Tuchone, Kaska, Tlingit, and Han. They form themselves into fourteen First Nations of widely varied socio-economic circumstances from the Vuntut Gwitchin of Old Crow, a remote community north of the Arctic Circle, a people reliant upon their traditional management of the Porcupine Caribou herd to the Kwanlin Dun, a Whitehorse-based First Nation, active and successful in real estate and property development.

It is clear that one single agreement could not address the varied interests of Old Crow and Kwanlin Dun at the same time. So the first feature of the C.Y.I. negotiating process is a First Nation by First Nation Comprehensive Claims Agreement under the guidelines of a Territory-wide Umbrella Agreement. Having made that determination, we attempted to build the following facets into our process:

1. that the negotiations would be "principled."
2. that the process would be "community-based."
3. that the process would be "open."
4. that in the absence of a pipeline, hydro project, or similar development, timelines were necessary to impose discipline.

Before I go any further, let me say that this design is not the property of myself, or any one of the many talented negotiators from either the Federal Government or the C.Y.I. It comes from the collective experience of all Yukon Indian people and the many former negotiators who invested so much of their time, energy, and talent in the negotiations over the last seventeen years.

Murray Coolican, in his keynote address, talked about the nature of Land Claim negotiations being *adversarial* because they are based on the "legal requirements" and because of the relative power imbalance between Government and Indian people. If Governments are going to ensure fair and just negotiating processes, they have to be structured to compensate for those power imbalances and seek methods less adversarial than those currently employed.

1. Principled negotiations focus on interests, not positions, and place a high value on the integrity of the relationship among the parties both during and after the negotiations. It requires more work, more preparation, more focus on process design, but the main thing it requires is training. We have conducted three all-party training sessions on interest-based negotiations and dispute resolution over the last four years. More is required.

We attempted to focus on process design, first by going from the general to specific.

2. By attempting to "fail-safe" the negotiation process by providing structures to back up the negotiating table and to ensure that specific issues would not bring negotiations to a halt.
3. We attempted to ensure that the negotiations were "community-based"; both stages of the process saw the negotiations take on a community presence.

During the A.I.P. stage, we rotated the A.I.P. table to the various Yukon communities. At the Land table the negotiations for each Yukon First Nation's interim land protection took place in the Yukon First Nation's home community.

Our next phase, the Yukon First Nations Final Agreements, will take place exclusively in the Yukon First Nation's home community, with Government negotiators, to the extent possible, moving into the Yukon First Nation communities to finalize land negotiations, harvesting details, economic opportunities and self-government.

What happens when you base negotiations in the communities?

Well, I could tell you a few interesting stories, like the Federal Chief Negotiator being "bucked" off the back of a snowmobile by a Northern Tuchone Chief who proudly proclaimed he flew through the air for at least ten feet before he hit the snowbank.

But more realistically, a community-based process has the following effects:

1. The process becomes real for the people it most directly affects, the aboriginal people and their neighbours at the community level. They see the give and take of the negotiating process; they can have direct access not only to their negotiators, but also to government negotiators and staff.
2. Government negotiators have an opportunity to understand the practical

application of the sometimes impersonal concepts and issues that they are negotiating.

3. Finally, a community-based process accessible to the people, both native and non-native, allows you to "ratify as you negotiate"; That is, to ensure that the decisions reached at the negotiating table have support at the community level where the final decision will be made as to their acceptance and where they will ultimately be implemented.

Tied directly to this concept of "ratify as you negotiate" is the degree to which the process is "open" to all those whose interests are affected.

From the beginning of our process in early 1987, negotiators from all three parties have briefed some fifty to sixty different interest groups on the process of negotiations, the process at the table on the factors driving specific issues of interest to them. Let me give you a few examples. We have talked to:

1. Municipalities and community associations.

2. Resource users:
   Fish & Game Association
   Outfitters Association
   Trappers Association
   Chamber of Mines
   Placer Miners

3. Others:
   Labour unions
   R.C.M.P.
   Clergy
   Yukon Teachers Association
   Elementary, junior, and senior high school students.

The results of this consultation have been graphic. The President of the Fish and Game Association agreed to participate in a video tape production explaining the fish and wildlife management process and endorsing it as effective. The Canadian Mining Association did an analysis of the A.I.P. and forwarded their report to the Federal Minister. The report itself was generally supportive, but here is the real success story: they developed their analysis in consultation with the C.Y.I. and actually sent a draft to the C.Y.I. for their review and comment before it went to the Federal Minister.

What does all this mean? It means that there is a broad base of support for the A.I.P. among a wide range of Yukoners. You people can draw your own conclusions as to how powerful a tool that can be.

Finally, a few words about deadlines. When we began the negotiations again in October 1987, we agreed that, given the body of work that had been done by previous negotiators over the years, a nine-month deadline would be imposed on the A.I.P. negotiations.

It was a deadline that we believed in and one that we frequently cursed. But, it imposed some discipline and:

1. It kept the principals (Chair and the C.Y.I. Board of Directors, the Federal Minister, and the Yukon Premier) focused on the process.
2. It provided some leverage for resources to support the negotiations.

So those are the things that we tried to do in our process:

1. Structure the process so that it was "principled."
2. Ensure that it was "community based."
3. Keep it an "open process."
4. Impose some realistic deadlines.

What does all this pre-suppose? It pre-supposes that there are adequate resources for the aboriginal people to participate effectively in the negotiations. What is the one single thing that the Government of Canada can do to ensure just settlements? Ensure that sufficient resources are made available to the process. So what did we learn? Where did we go wrong?

1. We learned that a broad base of support for the agreement is a very tenuous thing; and once you open lines of communication with a large number of interest groups, you had better keep them open or they will be snapping at your heels.
2. Ken Georgetti said yesterday that comprehensive claims are a political process. We learned yesterday that political leaders, not bureaucrats, ultimately make political agreements, which is, after all, what a comprehensive claim is—an agreement between governments. That leads to the conclusion that the political leaders of all parties must be involved together at strategic points throughout the process to make it successful.
3. We learned that it is important to implement parts of the agreement as they are negotiated; to "test drive" some of the structures and processes and see how they work.
4. That the people at the table must strive to reach a high level of cross-cultural awareness and understanding, and without it, all the training in interest-based negotiations in the world won't yield successful results.

Finally, let me suggest that although I believe strongly in the effectiveness of these process elements, there is no certainty that adjusting our structure will guarantee results. Whatever process you adopt must be flexible enough to meet the specific circumstances that prevail within your traditional territories. But it must be a fair process and it must be a just process.

6

The Next Three Years

Ed John

Barrister and Solicitor

The last time that I spoke at this university was two years ago, and at that time there was a conference in town of mystics—those who gaze into crystal balls. I suggested we ought to look at a crystal ball of our own in dealing with aboriginal claims and the land question. I did a bit of crystal ball gazing two years ago, and I'm going to be doing it again. There hasn't been a lot of change in the last two years.

I come from the north central part of this province—from the largest tribal territory in the province. When I completed my law school degree a number of years ago, I went home and started getting another education from the Elders. One of my Elders spoke to me in my language and said to me, "What do you mean land question or land title or land claims? Besides who the hell gave these people the right to boss us around in our land anyways?" I was trying to explain to him the complex legal questions, issues and how the courts and judges had dealt with the land question, aboriginal title and aboriginal rights. He asked, "What is that all about anyways?" That started me on the road of rediscovering many of the truths in our communities and many of the understandings that we about our way of life.

I will cover what I see as key political and legal issues which will arise over the next three years, and put it into the context of what I see as the various agendas in this province: the federal agenda, the provincial agenda, the First Nations agenda, and the various third party interests and their agendas. There is a very wide range of interests which need to be considered.

I had intended to make my presentation very short. This is what it was to be: "that unless the federal government drastically alters its policy on the negotiation of claims, and unless the province completely reverses its current position, or the First Nations discontinue their demands for just resolution of the land question, in my opinion there will be no change in the next three years." Don Ryan mentioned that he expects the provincial government will be making some major changes in their policy in 1990, but I have some reservations about that. I have about 130 years of government policy to support me. The real question in my mind is what is the likelihood of real change in the next three years?

I wish to draw a bigger scenario in attempting to understand these issues which we are discussing in British Columbia. I draw to your attention to the dramatic developments in Eastern Europe, in South Africa, and other parts of the world. One cannot forget the image of that one man standing in front of the military tanks in China. Changes are being fought for throughout the world. In Eastern Europe changes have occurred partly because of the courage of Mr. Gorbachev and mostly because of the courage of the people who stood up against the governments and the military powers that supported those governments. People wanted to change the repressive policies forced on them by their governments. In light of these developments, it is difficult for me to understand how the federal and provincial governments can maintain what our former Vice-Chief called racist policies. In the last two days I've heard various interest groups call for democratic action by federal and provincial governments to change their repressive and oppressive policies.

In the next three years, we will see a provincial election in which a major issue will be the land question. In 1992, again in the next three years, we will be seeing the celebration of five hundred years of European settlement—five hundred years of colonization of our people. Also in the next three years, in 1993, we will see the celebration of two hundred years of Alexander Mackenzie crossing by land to the Pacific. There will be major celebrations; but as native people we won't have a lot to celebrate in 1992 or 1993. Also in the next three years I see a tremendous amount of "lip service" being paid to the economy, the environment, and the concept of sustainable development; but there will continue to be degradation of the environment and human living conditions both in our country and world-wide. I see Canada struggling with the Meech Lake Accord; I see the French-speaking people and the English-speaking people struggling and fighting openly about Canada and what Canada should be. But they have yet to recognize the rightful place of aboriginal peoples in Canada's constitution.

It is within this context that we have to look at the various key issues.

Over one hundred generations of our people have breathed life on this land. The next three years will be just a blink against that hundred or more generations. That's the context that we need to know to understand what is happening to our Nations.

On the *legal* front, we will see an examination, by the courts, of the scope and the nature of those rights in Section 35 of the Constitution Act of 1982. We will see various judicial opinions on Section 35.

There must be seventy or eighty Supreme Court decisions on the 1982 Constitution and the Charter, but there is not one on aboriginal rights. We are, by now, used to being last. I hope that we are not very much disappointed. We are expecting a decision on the Sparrow case very shortly. This case has gained in prominence and importance over the last year and a half since it's been argued. In that particular case the provincial and federal governments and the entire fishing industry in this province have lined up against Ron Sparrow and the Indian people. The governments are arguing that the rights of the aboriginal peoples in this country have been extinguished, and if they weren't extinguished they certainly are subject to the legislation of this land. We know they are wrong; we think that the court will see justice in the issues. But the question in my mind is, "what are these rights which will be protected in section 35?" Another question also is whether or not the courts of this country will have the guts and the nerve to do justice to the issue and to do justice to Section 35. Canada's Supreme Court has been recognized as being on the leading edge of new legal developments in the Commonwealth world. It has a substantially good record. But what are they going to do with Section 35? Will it be a fraud on our people and on Canadians, or is will it be something which we can celebrate about? How will the Supreme Court of Canada measure up? How will the courts deal with third party interests? That case takes on a big, big picture.

On the *political* level, there are some key issues emerging. One of these, which was raised earlier, is whether or not there will be an overall framework land claims agreement in British Columbia, and whether or not there will be any support for that framework arrangement by the First Nations. Over the next three years there will be more land and resources used up than used by our people in a hundred or more generations. If there is no protection of the land, it will be a very difficult period for us. Governments continue to grant third party interests, making it ever more difficult for negotiations. I believe that it is a conscious effort on the part of governments. There is no moratorium on the granting of third party interests, of licenses for forestry or fisheries or mining. There is no political will. There will be less to negotiate for in the next three years. These are some of the issues which I see emerging.

What are the various *agendas*? In my mind all of the roads will eventually lead to negotiated settlements. For the *federal agenda*, Meech Lake and its June 1990 deadline is a major concern. But of what use is that accord to our people? It doesn't help us, and it doesn't protect any of the things that we want in there. There is no recognition. But what if there is an impasse? Where can we put our foot in the door?

We have to look at the role of our ambitious junior Minister of Indian Affairs. What is she prepared to do? I understand she has been given some authority over matters such as this. Is she going to be free of the policy influence she gained while she was a member of the provincial cabinet? I think there will be continued stalling on the part of the federal government on all negotiations. They will not take a proactive role in the protection of indigenous peoples' rights and will continue to pretend that something is being done for aboriginal peoples—very much what the provincial government is doing.

The *provincial agenda* in many instances is not very different from the federal agenda. Aboriginal rights will be an election issue in the province. The Premier's Council on Native Affairs is meeting with the various tribes throughout this province and, as I understand it, is listening to them. My question is, "Will they be able to act on what is being said to them by the First Nations of this province? Or is it just another one of those fraudulent activities of the government?"

In the First Nations agenda, I see First Nations continuing to be tolerant, but we will continue to be putting up roadblocks. We will continue to fight as much as we have in the past two hundred years. We will continue to provide more education and more information to third party interest groups, bureaucrats, and politicians, as we are doing today. We will see continued legal and political manoeuvres for the recognition and resolution of the land question. We will see the rising frustration of members of our communities as we are being pushed further and further against the wall. Industry will continue to come into our territories.

In conclusion I see changes in political leadership in this province, but not in the political agenda. There will be continued development in education, language, child care, and economic development, but not on the land question. You can bring out your crystal ball and I certainly hope that I'm wrong in my assessment that there will be nothing major happening in the next three years. Certainly unless there are drastic policy changes in the federal government's agenda, and unless there are drastic changes in the provincial government's agenda, nothing is going to change in this province.

Joanne Monaghan

Alderman
Kitimat

The Indian land claim issue has been very much on my mind for very many years. I came to this country about thirty years ago and have had the opportunity of living in Klemtu and Bella Bella, Kitkatla and Morristown and certainly enjoyed my stay in each of those villages.

My topic is the next three years in local government. The comments that I will make are not necessarily my own; they are comments that I have gleaned from many municipalities as I have done research into this field and asked these questions. These are the questions that they have asked me and they have come back to me with.

It is difficult at this stage in the land claims process to determine what impact these negotiations will have on local governments and how it should be responded to, particularly since we do not know the type of arrangements that the land claims may take or the aspirations of the different bands involved. There are now two levels of local government in B.C. We have 148 municipalities and 29 regional districts. Local government currently provides a broad range of services to everyone in the province, exercises regulatory control over a broad land mass, and provides political representation to urban and rural areas. Virtually every section of the province is covered by one or other level of local government. Different Indian land claim issues and settlements will have different impacts on local governments. For instance, territorial land claims whereby an Indian band would be granted complete authority over a broad area will have different impacts from resource-based land claims, whereby an Indian band would be granted authority over a limited territory and control of resource development and land on a much broader land use base.

The Indian land claim issue will affect the governments in several different ways: the nature of the political representation in our democratic process, accountability, the land use matter, economic development, and services. When I spoke to the various municipalities, these are some of the questions and concerns that they came up with. What mechanisms will have to be developed to ensure that all residents within a land area have a voice in the government which exercises control over that territory? What mechanisms will have to be developed to ensure that those in power are held responsible for their actions and deal with the cross-cultural differences which may arise? With broader territorial authority will come a much broader range of responsibilities. In the land use matter, arrangements will have to be developed to deal with jurisdictional problems which will arise as to who has authority to determine land use within a given area. Who determines what type of industrial development can go into an area? What regulations or guidelines will they have to follow? In the area of economic development, local communities, particularly throughout the North, have depended upon resources for their growth, development, and in some instances, their very existence. Who does industry talk to if it wants to develop resources in an area? Who pays to promote development in a region? The local government now provides a broad range of services to everyone in the community, including fire, police, sewer and water, roads, recreational and cultural services. These services are paid for from provincial grants and property taxes collected from homeowners, businesses and industries. Property taxes are the major source of revenue for the municipalities. The questions that they are asking are: Who will provide services once land claims are decided? Who will pay for the services? How will the services be paid for? Many of the municipalities really didn't understand the land claims issue at all. They had no idea really what it was. My conclusion, therefore, was that a framework will have to be developed at some stage in the negotiations to provide for discussion between Indian bands and local governments to ensure cooperation and consultation.

We have talked a lot about negotiations here today and a thought keeps running through my mind that in negotiations we have two sides that seem to be so very, very far apart. I wonder if a facilitating factor might not come into play here, so that the two sides would have a facilitator and they might narrow that gap just a little bit before they went into negotiations; both sides could clear the air and get their feelings to the foreground. In the final analysis, it will be the local government and the Indian bands which will be left to live with the arrangements. Let's make it fair and acceptable for everyone.

Jim Matkin

President
Business Council of British Columbia

I too appreciate the opportunity to be invited to this conference and to listen to some thoughtful presentations about a very important subject, a subject that hasn't been discussed enough in the kind of environment that we have shared at this conference. I think we need to do more of this, bringing together people with different points of view to sit down and talk about our respective positions.

There are some experts who have studied the success of communities and the economies of various countries. They found that every country that fails has some different reason why it fails, but they found that every country that succeeds shares some of the same characteristics. One of the key attributes of successful countries is that they are able to establish a common vision of where the country wants to go:

That's what the parties dealt with. So, going back to the concept of principled bargaining, maybe we should stop focusing so much on the words "land claims"; land claims is a narrow, old-fashioned idea and it may divert us from the reality of today.

Frank Calder urged us this morning to break the dependency cycle, to move away from the current hand-to-mouth begging situation with the federal government, and to allow our citizens to have jobs that are a matter of dignity, work that is real work, that will be sustained and survive. Perhaps that would be the way to distinguish between *interests* and *positions*.

It is very important in the concept of principled bargaining to focus on your interests, not on your positions. Positions lead you to your interests, but they should be very flexible and not too strongly asserted. You must be very firm on your needs; you can't compromise your needs, but you can compromise your position. That's a very important distinction to make and one that we all fail to make every day of our lives.

I am quite optimistic that there is a new mood, but I don't want to get carried away with my optimism in terms of what the federal government might do regarding compensation. Over the next three years, we are going to see an increasing focus on the problems that the federal government has with its debts. It is, as you know, a major debtor. The federal debt is now approaching $400 billion. Thirty-five percent of every dollar that we earn in the public treasury is going towards the debt; we pay $100 million a day on interest alone. We paid more this year on the debt than on any other program. This debt is getting worse; it is a serious problem. I hate to raise it in this context because it is going to put a cloud on the potential for large amounts of money, and it's going to support Ed's pessimistic view about the future of the next three years.

There are, however, ways of achieving some of our ambitions regarding work, jobs, employment, and environmental protection without spending large amounts of money. That requires more cooperation from the provincial government, and it certainly requires more cooperation from industry, but I'm sure that is something that can be done if we focus on our real interests.

One of the dramatic things that is happening to the world is that we recognize that markets are a very important way of allocating resources, and that we can use the private sector to create really meaningful jobs that will be of value to the First Nations people. That value will be something they can take as a heritage because it will have come from the land to which they have been entitled.

Cliff Andstein

Director of Contract and Resource Services
British Columbia Government Employees' Union

This is my fourth or fifth conference over the last four or five years dealing with the question of claims, as well as meetings with conventions of First Nations. For me it is an education process.

Ed John talked about learning truths. One very powerful event that occurred for me was last year at Tinwis, Sophie Pierre and I talked about how the names of the Kootenay area and Nuu-chah-nulth territory have been replaced. We now have the Begbie Building; we have Trutch Street; we have Douglas and Bowser. All of these are people who, at some point, will be judged by history differently than they are now being judged. I think we are in a process of revising history and starting to judge these people differently; maybe at some point this territory or this area will get back the names that it originally held. Then we can all learn the original names of the areas and the lakes and the rivers.

I come from Micmac Territory. I was born and raised there. By the time I had left, I had learned about the French; I had learned about the English; I had learned about the Irish; the Scots; my own ancestors, the Scandinavians; but I knew nothing about the Micmac, or the Malaseet. It wasn't until I came to Vancouver that I learned about the Beothuk and the genocide carried out against them. So, I think we have a lot of re-education, a lot of history and a lot of truths to learn.

I also agree with Ed John in that I am very pessimistic about what will be happening over the next few years, not because of any concern of the people involved or the bureaucracies, but because I don't think there is a political will on the part of governments and political parties to resolve the question of claims.

I also would like to point out that I believe that up until recently, the labour movement has been part of the problem, and not part of the solution. Clearly, until prior to the decade of the eighties, we had many problems within the labour movement. There was discrimination; racist and stereotypic attitudes towards First Nations people were quite prevalent. And a lot of them still exist. Many of them now though, I think, are based on misunderstandings and insecurities, which people have tried to address a bit over the last few days. A lot of work has been done over the last five or six years within unions, within the Federation of Labour, and the labour movement generally to change these attitudes, to get people to appreciate the comprehensive nature of the problems we are facing in dealing with what is called the claims question.

One of the first events that started us on this road was the conference co-sponsored by the Federation of Labour and a number of tribal councils in Nanaimo in 1986. There were about 150 people there, predominantly from tribal councils and from unions. Following that, we have in the labour movement undertaken our own campaigns. We have done educational work within our local unions. We have passed resolutions. We have written letters to politicians. We have gone and spoken ourselves at meetings of tribal councils and conventions. We have had speakers from tribal councils and First Nations at our conventions and have made it part of our education process. But clearly it hasn't been enough. It hasn't been enough because of what Ed John says; the negotiations will probably not be successful. So where do we go from here? Where do we in the labour movement go? Where do a number of the people in this room go from here?

Well, I think the first thing is that we all have to recognize that there is concern, there is nervousness, there is fear on the part of many non-native people about what will happen as a result of a settlement. That is a legitimate concern in the sense that they feel it. It's not legitimate in the sense that their houses will be taken away or they will lose their jobs, but people are scared. So, one of the things that we have to do, and maybe one of the things senior people in the provincial and federal governments can do, is to convince our politicians to stop this racist silliness about creating fears, saying 120 percent of British Columbia is being claimed by Indian groups and what are we all going to do—we will all have to go back to Europe, and things like that. We have to stop that.

One of the things that we could do is convince the Premier to spend a half an hour on prime time talking about claims, talking about the legitimate aspirations of the First Nations, rather than subjecting us to a half an hour of his own personal problems. The other thing we have to do in the labour movement is to take a lead in meeting with First Nation organizations and with tribal councils, and talk about principles to go into collective agreements and into development contracts that give jobs to people in those communities, that do not save all the jobs for the tradesmen with seniority from the Vancouver area or from people currently on the staff. We have to do that. But we will only do that if we get approaches from the tribal councils as well, from representatives of native organizations to say that "We want to sit down with you and talk about some principles."

Most of us here are opposing the building of the site C dam because of what it is going to do to the land up there, because it is not the Social Credit government's land or B.C. Hydro's land to deal with anyway, and because of the environmental damage. In years past, when those types of megaprojects were undertaken, we should have had agreements to ensure employment from the local communities and from native communities. What I'm saying is that with your assistance, we can work to get unions to start doing that type of thing.

People talked earlier about recognizing diversity within the First Nations. I remember one of the first meetings I attended at which one of my colleagues at the time sat down and said "Well, first of all, the labour movement has to know what your position is, and you have to have one position so that we can deal with it." We have moved a long way from that. We and people in the native organizations have done a lot of the work to change the attitudes of people in the non-native community or in the labour movements, and to recognize that there are different national identities out here. As Frank said earlier today, there are going to be different sovereignty arrangements made. But at the same time, I think it is necessary for native organizations to recognize that non-native society is also diverse, it is also not monolithic. I say diverse not in the sense of multiculturalism, but in more fundamental terms, in terms of power, in terms of economics. We live in a society that some people still characterize as a class society. Some people work for a living; we work for wages, or are unemployed. We work for corporations and we work for big governments. The interests of those corporations and the interests of working people are not the same. Federal and provincial governments do not represent the working people of this province or the working people of this country. They do not represent us at the negotiating table, negotiating a comprehensive claim settlement. A government that passes anti-labour legislation in an attempt to destroy unions; that cuts government employment from 50,000 to 35,000; a government that cuts spending on health, education, and welfare to bring in legislation taking away trade union rights is not a government that represents us as working people. Agreements that you may reach with them that do not involve us may be agreements that are very difficult for us to sell amongst our own membership, even though we support the position that aboriginal title exists, that it has not been extinguished, and that governments must negotiate rather than leave it up to the courts. What I would suggest is that it is time for representatives of First Nations to sit down with the B.C. Federation of Labour and specific unions, to start talking in real terms about what the end product might be.

We have come up with some very strong accords and declarations of principles over the last few years. We have taken those out and had our local unions adopt them and support them. We do this as part of the education process. They are still nervous; but there is no reason why the Federation of Labour and some of the unions cannot sit down with the

Gitksan Tribal Council and start talking about what things might look like under a land claims settlement. Then we can take those out and say to our people, "This is what it might look like. This is what we want you to support. This is what we want you to lobby the politicians to negotiate with the tribal councils, with native organizations." My experience as a negotiator over the last fifteen years has been that unless there is pressure on people to compromise, they will not compromise. There is no pressure on the federal government. There is no pressure on the provincial government. Don Ryan was talking about putting pressure on third parties, through blockades; that can be done, but the pressure that will come on federal and provincial governments is political pressure. Political pressure comes through combined forces, through united forces.

Miles Richardson earlier said, "Without negotiations, without compromise, there is no common ground." I believe there is more common ground between non-native working people and trade unionists in this province and native people than there presently exists between native people and the federal and provincial governments. We need to strengthen that common ground, make it more specific, and become more united on it, so that all of us are putting pressure on federal and provincial governments to sit down and negotiate a just and fair settlement to the claims question. That's what we have to start doing over the next three years.

Sophie Pierre

Area Coordinator
Kootenay Indian Area Council

I sat up here looking around at you and I wondered what it was that brought you to this conference. Why did you come here? What were your expectations? And what are you going to be going away with? I suppose there are as many reasons for being here as there are people in this room; but I think that the one commonality, the one expectation that we share, is that we are moving towards a better understanding of the issue of aboriginal title, and a better opportunity for native people to explain what it is that we mean when we talk about aboriginal title. I do feel that there is a momentum building.

Before I go on to discuss some of the outcomes of this conference, I would like to make a couple of comments on comments that I have heard from delegates. A couple of the comments that I heard went along this line: "What do you think of the conference?" "Well, you know, it's a lot of the same stuff. I have heard a lot of this before. It's really not much different than other times I have heard Indian people speak." It occurred to me that we are still not getting through because the message is the same, the same today as it was 125 years ago. It's only the messengers that are different. If not exactly "shot" along the way, some of those messengers have been incarcerated. But the message really hasn't changed because the situation hasn't changed. It's not going to change until we are heard and we are understood and negotiations start and those negotiations are based on the recognition of aboriginal title.

Another comment that was made and that I felt I had to say something about was that a lady suggested that there was something missing in this forum, and that was that there were very few women involved in the panels. By the same token that the message is the same, that the issue is not really a white or Indian issue, neither is it a man or woman issue, it is an issue that affects all of our people. It affects all aboriginal people, and it affects all of the other people that have made British Columbia and Canada their home. So, although I do like to have more women on panels, I don't want to detract that from the message we are giving, that this is an issue of aboriginal title and it applies to all aboriginal people.

As I said, the message remains the same, and just about every Indian speaker who has come up here has said the same thing. I don't feel any frustration that I'm another messenger with the same message, because like many other Indian people, as a little girl I was trained to be in some type of a leadership position. In my upbringing I was told that if I had a message to deliver I had to repeat what I had to say, I had to repeat it as many as a hundred times, or a thousand times, until I was actually heard, and that if I was not heard I had to ensure that the message was passed on to my children so they could repeat it a hundred or a thousand times until we are just not listened to, but *heard*. I guess that is really the message we are bringing forward.

You all came here with some expectations. What are some of the outcomes of this conference that we can plan on? I think there are many of us who are ready. We are saying, "What now? What are we going to do now?" We aren't all just going to walk out of this room and forget about it until the next conference when we get together and we all deliver the same message. It's not enough just to do the government-bashing; what we need is to work together on something that goes beyond that. I think the most likely place to start is with public education. The population of British Columbia has got to be ready when those negotiations start, so that we start with educated support. I think that is really the role that non-Indian people can play the most, so that we can get rid of the bogy man. If we can get rid of only one obstacle, we will be much further ahead, because there is one particular obstacle which is a very powerful tool for governments: public ignorance.

Another thing that you can be doing as citizens of British Columbia suggested by a number of speakers is to make the government aware of our outrage of the misuse of our tax dollars. We all have to do that. As for the First Nations, we also have many responsibilities flowing from this conference, flowing from our reasons for being here and our expectations. We've come from all corners of the province. I think that everyone in the province was represented here. Because of that, we have a responsibility to continue the momentum that is building here. We have a responsibility to continue those regional meetings with industry. We have to follow through on that at the regional level, because there are some particular frustrations about having continual provincial meetings where we can't get down to specific issues.

I sat in on the workshop with the B.C. Federation of Wildlife this morning, and I really was concerned about some of the things that were being said. I guess the problem is a lack of information. Non-natives want some information; they want to know what Indian people are talking about in terms of the number of animals they are going to be taking, the species, the time of the year, and so on. I can almost imagine an agreement that is going to be so finite that nobody can live with it. That is the kind of thing that we need to sort out. We need to meet with the municipalities. We, as Indian people, have to ensure that we have those meetings to deal with specific issues. That is the only way we are going to find this common ground that people are talking about, that we do have that obvious commonality amongst us.

I also would like to suggest to those who consider themselves to be third party interests that they ensure they are involved in these discussions, because I as an Indian person would not recommend that you depend on government to look out for your interests. Furthermore, Indian people have to make sure we are responding to the various initiatives that come forward. I know that the NDP, for example, have just tabled a discussion paper on land claims; we have got to study that and we have to respond to it. They are asking for our response and we have to do that. We have also got to prepare for the elections that are coming up. We will have a provincial election probably within the next twelve months, and a federal election coming up after that. We have to ensure that an educated discussion of aboriginal title is an issue. I think that it is only through education that we can bring the governments of Canada and British Columbia along as willing partners.

Frank Calder spoke this morning about reacting to things because of embarrassment. Well, Canada is a country which prides itself on its superior human rights record, but I think Canada has a lot to be embarrassed about. My people were taught, and are still being taught, that you do not criticize, ridicule, or call down other people because that type of talk makes a full circle and comes back to you. It really bothers me when Canada is so smug in its condescending attitudes towards the happenings in the world, for instance in South Africa. They are going through change, but there are still a lot of terrible things happening there. But I just want to caution Mr. Mulroney to take heed, because he does live in a glass house.

7

Concluding Comments

Frank Cassidy

Over the past few days, speaker after speaker has called for a solution to the land question in British Columbia. This theme was echoed in diverse ways, by representatives of business, labour, municipalities, environmental groups, the legal and academic professions, and the First Nations of British Columbia. Time and again, the delegates were told that there is a need for just settlements and the negotiations that might lead to them. While maintaining that their interests must be recognized, respected, and protected, all of the speakers pointed to the need to find and expand the common ground that exists and might exist on this pressing issue.

The federal and provincial governments did not formally participate in the conference, although the responsible Ministers were invited to do so. Many federal and provincial officials were in attendance, however, and several privately expressed sympathy with the themes that emerged at the session.

There are several forces that are and will be increasingly driving the provincial and federal governments to the negotiating table in British Columbia to engage in an active search for just settlements. There is an accelerating sense that the absence of settlements is causing uncertainty which is negatively affecting the economy. Developers wonder who their real landlords are—or will be. Investors are concerned about the conditions that surround and will be surrounding development. Working people worry about their jobs. Small businesses, such as those in the fishing industry, are concerned about who will pay for settlements when they do come. Large businesses are thinking about going or just staying elsewhere.

Economic uncertainty is not the only force that is building momentum towards settlements. The Courts are more and more expanding the recognized nature in law of aboriginal title and rights. British Columbians are also increasingly recognizing that the provincial and federal governments have the power to make land claims settlements. Meanwhile, aboriginal peoples and their governments are using direct action and the Courts to obtain injunctions to halt development while the questions of aboriginal title and rights are pending in the judicial system.

Municipalities are beginning to more strongly recognize that aboriginal self-government and land claims settlements may affect them significantly. Communities around the province want an end to the uncertainty. They want to identify and build upon the common ground that exists between aboriginal and non-aboriginal people. Aboriginal people, in particular, want to further build their communities on the basis of a recognition of thier aboriginality and with adequate resources. They are increasingly making this clear in many ways and many places.

Across Canada, land claims settlements have taken place or are in the process of taking place. Why is it only in British Columbia, it may well be asked, that we are not making the kind of progress we should make? Economic, legal, community, and national forces indicate that we should do so. They may lead us to conclude that we may no longer have the possibility of avoiding just settlements. Certainly, the land question is one that is rooted firmly in the history of British Columbia. It's been there since the colony's beginning, and it will not go away.

Many compelling reasons—economic, legal, community, national, and historical—are pushing British Columbians toward settlements, but perhaps the most compelling is—or should be—the matter of justice itself. The First Nations of British Columbia do not feel that they have been truly recognized or that they have been treated fairly. Nor do many other British Columbians.

There is a need for negotiations which will lead to just settlements in British Columbia. At this conference, many of the issues that might be discussed and resolved at the negotiating table were identified and debated. This was true of forestry, fisheries, wildlife, non-renewable resources, environmental, economic development, labour, and municipal issues.

Negotiations around these issues might work if such negotiations, to as great an extent as possible, were open and if all parties were effectively represented at the negotiating table, in one way or another. There are many difficult questions about the negotiating process which need to be posed and resolved. How will negotiations proceed? Will they take place on a province-wide level? Can they succeed, if they do? Will they take place between particular First Nations and the federal and provincial governments? If so, and assuming that it may not be possible to have a score of negotiations proceeding at once, who will "go" first and who will wait? How will negotiations be funded?

Other related questions also remain to be answered. What shape might the various settlement packages which are placed on the negotiating table look like? What will be acceptable to particular interests? What will not be? What will be the relationship between aboriginal self-government and claims settlements?

These are questions that need to be raised and answered in British Columbia today. These are questions that the federal and provincial governments should be addressing. Perhaps one of the strongest themes that arose at the conference, "Reaching Just Settlements," was the view that these governments need to become much more active in relation to the land question in British Columbia. These governments are still debating yesterday's questions, questions about the very existence of aboriginal title and rights, while these questions have been already answered in the Courts and through the Constitutional process.

We need governments which will seek just settlements and which will educate themselves as well the people of British Columbia and Canada about the need for and most appropriate shape of just settlements. We need governments which will provide vision and leadership on this most significant of issues.

These were the themes that emerged at the conference, "Reaching Just Settlements."

Appendix 1

Premier's Council on Native Affairs

Progress Report and Interim Recommendations

July 25, 1990

Preface

In July, 1989, Premier Vander Zalm created a Premier's Council on Native Affairs.

The purpose of the Council was to review provincial policies affecting aboriginal people and to meet with tribal councils across the Province to hear their concerns.

The Premier appointed to the Council three aboriginal and three non-aboriginal British Columbians, along with the Minister of Native Affairs and the MLA for MacKenzie. The Premier is chairman of the Council. (See Appendix A.)

Since its formation, the Council has met with 11 tribal councils and 8 aboriginal organizations (see Appendix B).

Hundreds of issues have been raised. They range from specific, local concerns to widespread social and economic problems.

Local issues have been referred to provincial ministries for immediate follow-up where possible.

The body of this report deals with the larger public policy questions that have been raised.

Some of these issues are extremely complex. Many are intertwined with long-standing grievances about land and aboriginal rights. Many more are complicated by the jurisdictional divisions within Canada.

The terms that are used, such as "land claims, the land question, aboriginal rights, aboriginal title, and self-government," mean different things to different groups.

The main message the Council heard from aboriginal people across the Province was "respect who we are."

In spite of the complexity of the issues and some difficulty with terminology, a number of common themes emerged from the meetings:

- the need for greater economic opportunity for aboriginal people;
- the need for more effective social and health services;
- the need to safeguard the environment;
- the need for improved access and control over education.

Overriding all of these issues was the need to resolve the land question.

This progress report deals only with the areas of economic development, social issues and the land question.

Introduction

Over the past year we have travelled from one end of this Province to the other to meet with aboriginal people.[1]

We have met in community halls with large public audiences and with small delegations.

We have met with 11 tribal councils representing 10 language groups, 76 bands and more than 17,000 tribal members.

We have also met groups representing tens of thousands of off-reserve aboriginal people and with provincial associations representing a variety of distinct aboriginal concerns.

Although we expect to learn more at future meetings, we have prepared this progress report on our findings to date.

Our hope is that this document will provide the basis for a broadly-based public discussion on the issues facing the British Columbia Government in its relationship with first citizens.

The intense desire of aboriginal people throughout British Columbia to create their own opportunities and to solve their own problems has made a lasting impression on the members of the Council. Aboriginal people clearly want control of their own destinies.

However, we were presented with many examples of situations where aboriginal communities did not have the economic or legal tools to achieve their goals.

The desire for self determination is often frustrated by legislative barriers and inter-jurisdictional problems with the federal and provincial governments, or by structural economic barriers that affect aboriginal people more severely than other British Columbians.

It is distressing to see that most aboriginal communities have not been able to participate fully in the economic activity that has taken place in this Province in recent years.

While the Province overall has seen reduced unemployment and healthy growth in the business sector, we still see aboriginal unemployment at well over 50 per cent in many parts of British Columbia.

The consequence of unemployment is widespread poverty. This is reflected in many of the social problems described at our meetings.

The life expectancy of aboriginal people is still 10 years shorter than for other British Columbians. The incidence of suicide, family violence and substance abuse is more than double that of the general population.

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[1] 'Aboriginal' is the term that has been used most frequently in this report to refer to the people who first inhabited British Columbia. 'Indian' is a legal term for an aboriginal person registered or entitled to be registered under the federal Indian Act.

Nevertheless, there is a great deal of hope and positive enthusiasm for change in the communities we have visited.

Community leaders are determined to face difficult problems head on and to seek solutions through hard work and ingenuity.

We heard of several social programs, based on traditional values, that were developed and operated by aboriginal communities. We were also impressed with the many and varied efforts to pursue economic independence.

Where there have been successes, however, the impetus has come largely from within the aboriginal community itself. Governments have cooperated, but there is still a great deal of room for support and expansion of this fledgling progress.

The unresolved land question loomed large over most of our meetings with tribal councils. Many aboriginal leaders consider this the fundamental issue facing their people. Their view is that settling land claims is a prerequisite to economic and social development.

It is abundantly clear that this is a source of increasing frustration. There is increasing determination among aboriginal people to have this issue resolved.

Again and again the Council heard specific warnings that patience is running out. Again and again tribal groups appealed to the Province to join in a process of honest and respectful discussion and negotiation and to help find a solution everyone can live with.

I *Economic Development*

The current regulatory environment in which aboriginal people find themselves has not allowed full participation in the economy. While not all aboriginal people in British Columbia are excluded from the economic mainstream, the participation rate of aboriginal communities is unquestionably lower than in others.

This is not because of lack of will. In communities we visited, aboriginal leaders shared a vision of local economic development. They saw it as essential for strengthening their communities.

We heard how economic development could create income that would in turn finance solutions to some community problems. Economic development was also seen as a means of providing individuals and families with the self esteem that is so often destroyed by poverty.

We looked for common factors to explain why aboriginal people in all regions of the Province from so many different cultural and language groups are affected by this problem. Even in the relative prosperity of Vancouver, aboriginal people are often at the bottom end of the economic scale.

What we discovered are some significant structural barriers:

Availability of Investment and Operating Capital

The Federal *Indian Act* makes it impossible for a lender to attach property located on an Indian reserve. As a result, aboriginal business people are unable to offer security for a business loan—even when the business is viable and has some valuable assets.

Arrangements such as financing and bonding that are taken for granted by off-reserve businesses are simply not available to aboriginal businesses wanting to produce or market their products or services on-reserve.

For example, a band may have valuable timber on its reserve, but be unable to finance the equipment needed to harvest it.

The federal and provincial governments offer a number of programs to help aboriginal businesses overcome this problem. However, we have heard complaints that there are insufficient program funds available and that government programs cannot respond quickly enough when new opportunities arise. By the time help is approved, the opportunity has passed.

Businesses owned by aboriginal people need to have the same ability to attract capital as other businesses.

Government measures to help might include tax incentives for those who finance native-owned businesses, special assistance to aboriginal lending institutions, an expanded program of loans or loan guarantees through programs such as the Province's First Citizens' Fund.

Leadership and Training

Success in business requires many skills—some of which can only be gained through training.

Isolated, rural communities, generally, have a lower post-secondary participation rate than urban centres. The hundreds of rural aboriginal communities in British Columbia are no exception to this tendency.

We have also been told it is difficult for aboriginal young people to cope with the different culture when they move away from their families to go to school.

Those living in communities with high unemployment and little or no business opportunities also do not have much incentive to train themselves for business.

The provincial government is currently studying ways to increase the participation rate of aboriginal people in post-secondary education. The Council endorses the efforts of the Provincial Advisory Committee on Post-Secondary Education for Native Learners in that regard. It may wish to consider including in this effort a special emphasis on training including business internship programs that will provide skills that are useful in economic development.

II Social issues

Aboriginal leaders who met with the Council were blunt and candid in their description of social problems. At times it was painful to come face to face with these problems.

The Council has tremendous respect for the grace and courage of those who were able to discuss these matters with a group of outsiders.

We are aware that social welfare and health services on Indian reserves are the responsibility of the federal government. We are also aware that social problems affecting aboriginal people in urban centres are the responsibility of the Province.

Many of the problems faced by aboriginal people appear to be part of the legacy of misguided efforts.

For example, for the better part of a century and as recently as the late 1960's many hundreds of aboriginal families were disrupted by the placement of children in federally-funded residential schools hundreds of miles away from their homes. Although some of these schools were well run, many were not and thousands of children suffered physical, emotional and even sexual abuse.

Similarly, federal Indian policies and the *Indian Act* contributed to the breakdown of traditional social structures in aboriginal communities by removing most of the authority of band councils to make decisions about their communities. The Act also created divisiveness and disrespect for the traditional hereditary judicial systems.

Programs

Social problems are very much related to many of the economic problems faced by aboriginal communities. Generations of poverty and powerlessness rob people and families of their self-esteem.

However much social problems may be rooted in the mistakes of the past or in economic conditions, the damage still needs to be treated and healed.

One message that we heard consistently is that the aboriginal communities want control over their own social programs to address social issues in their own ways.

There is sufficient evidence that programs developed and controlled from outside the aboriginal community have not been very successful.

We recommend that the provincial and federal governments support the concept of social programs being controlled by aboriginal communities.

Jurisdiction

Although aboriginal people are citizens of British Columbia, the Canadian constitution assigns responsibility for providing most government services for those who live on reserves to the federal government.

Social services, education and health care for aboriginal people who do not live on reserve are the responsibility of the Province.

However, theses jurisdictions are not as independent as they may at first appear.

- Many aboriginal individuals move on and off reserve over time.
- The standard of service provided by the two levels of government is sometimes different.

Health and social issues can emerge on or off reserve and the provincial and federal governments should work together to find ways to cooperate and ensure that their programs complement each other.

Self-Government

The concept of self-government in aboriginal communities means different things to different groups. The term aboriginal self-government does not at this time have a precise legal meaning in Canada. It describes a political principle that provides local communities with the authority to regulate themselves and their institutions.

In practice, self-government is discussed at three levels in British Columbia:

Constitutional Entrenchment

During the debate on Canada's current constitution, many people—especially aboriginal people—argued that aboriginal self-government is an inherent right and should be entrenched in the Constitution. This would mean that all federal and provincial laws would be required to conform to the principle that aboriginal people have inherent jurisdiction over their own communities.

Legislated Self-Government

Legislated self-government occurs when provincial and federal governments pass legislation to transfer jurisdiction to local aboriginal governments. The nature of this transfer depends on the objectives of the aboriginal councils and the outcome of negotiations with government. It is unlikely that any two arrangements would be the same. The Sechelt Indian Band is an example of negotiated and legislated self-government. There are other examples in other Canadian Provinces.

Incremental Self-Government
Incremental self-government occurs when services such as health, child care or education are transferred from government control to local control by a band or tribal council. In some cases, this is an interim step along the road to more comprehensive, legislated self-government.

Increased support for self-government would give aboriginal communities increased opportunities to use talents and strengths that are often frustrated by the Federal *Indian Act*, and to develop skills that may be used in business enterprises. Self-government is clearly linked to self determination, self reliance and self respect in aboriginal communities.

We recommend the provincial government actively look for opportunities to accelerate the process of legislated and incremental self-government, and to encourage discussion of constitutional entrenchment of self-government during any future review of the Canadian Constitution.

III The Land Question

The outstanding issue of aboriginal land claims was the over-riding concern of the tribal councils visited by the Premier's Council on Native Affairs.

The whole question of Indian land claims has been the subject of debate and discussion across Canada since Confederation—and nowhere more so than in British Columbia. Nineteen of the 24 outstanding comprehensive land claims that have been accepted for negotiation by the federal government to date are in British Columbia.

Indian leaders conveyed a sense of urgency to the Council in seeking to have this issue resolved.

Indian communities believe their ability to participate fully in the economy and the social fabric of the Province is dependent on an adequate land and financial base from which to create healthy local economies and services for their citizens.

The Council shares the view that there is a need to provide economic advancement and social equity for British Columbia's first citizens, so that aboriginal citizens will be given the opportunity to share with the provincial government the benefits of the natural resources and have an opportunity to share the related responsibilities.

The Premier's council, after considerable deliberation, is of the view that immediate steps are required to address this situation.

The Council is mindful that major litigation on these issues has been undertaken in recent years.

The Council acknowledges that the Canadian Constitution recognizes the existence of aboriginal rights even though it doesn't define those rights. The *Sparrow* case, recently decided by the Supreme Court of Canada, also remarked on the existence, unextinguished, of certain aboriginal rights.

In addition, the Supreme Court of British Columbia recently heard final arguments from all parties in a landmark case on aboriginal title, and a decision is expected within a year (*Delaum Vukw et al V. The Queen*).

The Council concludes that a progress report and recommendations to Cabinet should and must be made in order to speed the process of resolving the issues of aboriginal rights and title.

The Council believes action can be taken without prejudicing any party's legal position, although much of the debate and discussion about land claims in British Columbia centers on questions of who is responsible to resolve the issues and what process might be used.

Importantly, the recent *Sparrow* decision would seem to confirm that the Government of Canada has the primary responsibility, and also a fiduciary or trust obligation, for Indian matters.

This suggests to the Council that the Government of Canada must quickly find a workable formula for fulfilling its fundamental responsibilities to deal with the outstanding land question in British Columbia.

The Premier's Advisory Council heard again and again from Indian communities that the current federal land claims policies are totally impractical for British Columbia's challenges.

One example is the policy of Canada to negotiate no more than six land claims at any one time, only one of which can be in British Columbia.

The Council was also made aware of the problems created by Canada's policy of only accepting claims for negotiation where continuous use and occupancy of traditional areas has been maintained.

This policy penalizes bands in urban areas where much of the land has been alienated, and forces bands to consider actions to assert their use and occupancy. These actions may conflict with the rights of others and generate ill will and misunderstanding.

The Council urges Canada to rework its policies to reflect new legal and geographic realities and to develop a comprehensive framework for settling British Columbia's land issues. This new policy has been promised by the federal government for some time.

The Government of British Columbia must, as well, find new ways to address this complex issue and to help effect a just settlement of Native land claims.

The federal government alone cannot access the resources and instruments that are necessary to do this.

Currently the title to and management of the land and natural resources which, in part, might form the basis for a settlement of some claims, are vested in the provincial Crown, and thus, it is vital that the Government of British Columbia be an active participant at the negotiating table.

In addition, the Province should be at the table to ensure that the interests of all British Columbians are taken into consideration as part of the negotiations between Canada and Indian bands.

We do not believe that the Government of British Columbia, by agreeing to such a recommendation, would in any way be relieving Canada of its legal and financial obligations to Native people or the Province.

The Council also believes that the Government of British Columbia should move quickly to establish a specific process by which aboriginal land claims may be received and placed on the negotiating table.

At the same time, the Council feels that Indian leaders and the Province should work together to press the Government of Canada to accept its main responsibility for resolving B.C.'s land claims.

Public Education

The Council recommends that a major public awareness initiative should be started immediately to ensure a better understanding of the history of aboriginal issues in British Columbia.

Conclusion

The Council is heartened by the Premier's commitment to place this progress report before Cabinet and to ensure that a decision is rendered in August.

Summary of Recommendations

Economic Development

- **Businesses owned by aboriginal people need to have the same ability to attract capital as other businesses.**

- Government measures to help might include tax incentives for those who finance Native-owned businesses, special assistance to aboriginal lending institutions, an expanded program of loans or loan guarantees through programs such as the Province's First Citizens' Fund.
- The provincial government is currently studying ways to increase the participation rate of aboriginal people in post-secondary education. The Council endorses the efforts of the Provincial Advisory Committee on Post-Secondary Education for Native Learners in that regard. It may wish to consider including in this effort a special emphasis on training including business internship programs that will provide skills that are useful in economic development.

Social Issues

- One message that we heard consistently is that the aboriginal communities want control over their own social programs to address social issues in their own way.
- We recommend that the provincial and federal governments support the concept of social programs being controlled by aboriginal communities.
- Health and social issues can emerge on or off reserve and the provincial and federal governments should work together to find ways to cooperate and ensure that their programs complement each other.
- Increased support for self-government would give aboriginal communities increased opportunities to use talents and strengths that are often frustrated by the Federal *Indian Act*, and to develop skills that may be used in business enterprises. Self-government is clearly linked to self-determination, self-reliance and self-respect in aboriginal communities.
- We recommend the provincial government actively look for opportunities to accelerate the process of legislated and incremental self-government, and to encourage discussion of constitutional entrenchment of self-government during any future review of the Canadian Constitution.

The Land Question

- The Council urges Canada to rework its policies to reflect new legal and geographic realities and to develop a comprehensive framework for settling British Columbia's land issues. This new policy has been promised by the federal government for some time.
- The Government of British Columbia, as well, must find new ways to address this complex issue and to help effect a just settlement of Native land claims. The federal government alone cannot access the resources and instruments that are necessary to do this.
- Currently title to and management of the land and natural resources which, in part, might form the basis for a settlement of some claims, are vested in

the provincial Crown, and thus, it is vital that the Government of British Columbia be an active participant at the negotiating table.

- In addition, the Province should be at the table to ensure that the interests of all British Columbians are taken into consideration as part of the negotiations between Canada and Indian bands.
- We do not believe that the Government of British Columbia, by agreeing to such a recommendation, would in any way be relieving Canada of its legal and financial obligations to Native people or the Province.
- The Council also believes that the Government of British Columbia should move quickly to establish a specific process by which aboriginal land claims may be received, prioritized and placed on the negotiating table.
- At the same time, the Council feels that Indian leaders and the Province should work together to press the Government of Canada to accept its primary responsibility for resolving B.C.'s land claims.

Public Education

- The Council recommends that a major public awareness initiative should be started immediately to ensure a better understanding of the history of aboriginal issues in British Columbia.

Members of the Premier's Council on Native Affairs

The Honourable Bill Vander Zalm,
Premier of British Columbia

The Honourable Jack Weisgerber,
Minister of Native Affairs

Harold Long,
MLA for provincial electoral district of Mackenzie

Dan Hanuse,
Elder and member of the Nimpkish Band, logging contractor and businessman. Originally from Alert Bay, currently residing in Vancouver

Robert Louie,
Chief of the Westbank Indian Band, lawyer and rancher, member of the Provincial Advisory Committee on Post-Secondary Education for Native Learners

Margaret Vickers,
Aboriginal consultant, Kispiox, B.C., educator, board member of the Open Learning Authority, former member of the University of Victoria Senate

Dr. Paul Gallagher,
President, Vancouver Community College. Active in post-secondary education and affiliated with the Native Education Centre in Vancouver

Mary Saunders, Q.C.,
Partner, Campney & Murphy, Barristers & Solicitors, Vancouver; director, Justice Institute of British Columbia; member and Acting Complaint Commissioner, B.C. Police Commission; governor, Johannesen International School of the Arts, Victoria International Festival, Canada Opera Piccola

Hajimu Watanabe,
President and General Manager, Daiwa Securities Canada. Parent company involved in large economic development initiatives with aboriginal groups in the United States

Premier's Council on Native Affairs Roundtable Meetings with Tribal Groups and Provincial Organizations to July 25, 1990

Nisga'a Tribal Council, New Aiyansh, July 28, 1989
United Native Nations, Vancouver, September 18, 1990
Sechelt Indian Band, Vancouver, November 6, 1989
Tahltan Tribal Council, Dease Lake, November 6, 1989
Okanagan Tribal Council, Pentiction, November 28
All Nations Trust, Pentiction, November 28, 1990
Intribal Forestry Association, Pentiction, November 28, 1990
Shuswap Nation Tribal Council, Kamloops, November 28
First Citizens' Advisory Committee, Vancouver, December, 1990
Indian Arts and Crafts Society of B.C., Vancouver, December, 1990
Carrier-Sekani Tribal Council, Fort George Band Hall, January 19, 1990
Nuu-chah-nulth Tribal Council, Port Alberni, February 27, 1990
Hiasla Tribal Council, Kitamaat Village, March 12, 1990
Provincial Advisory Committee on Post-Secondary Education for Native Learners, April 10, 1909
Nicola Valley Tribal Council, Merritt, May 4, 1990
Western Indian Agricultural Corporation Limited, Merritt, May 4, 1990
Mid-Island Tribal Council, Victoria, June 25, 1990
First Nations of South Island Tribal Council, Victoria, June 25, 1990
Lillooet Tribal Council, Victoria, July 20, 1990

Appendix 2

First Nations Congress Response

1. Presentation to Premier William Vander Zalm

August 17, 1990—Vancouver, B.C.

The First Nations of British Columbia assembled here today welcome the opportunity to hear directly from Premier William Vander Zalm some further information on his August 9, 1990 announcement accepting the recommendations of the Premier's Council on Native Affairs.

We view the announcement of the Province's willingness to come to the negotiating table as a positive first step towards the just resolution of land and sea claims.

Our participation in this and any subsequent discussions *does not* constitute abandonment of each First Nation's understanding of Aboriginal Title and Treaty Rights. We *specifically reject* the assumption that extinguishment is the purpose of any negotiations.

Despite this obvious difference of opinion between the First Nations of British Columbia and the Provincial government, we believe that progress can be made to resolve land and sea claims if the Provincial government demonstrates good faith.

We believe that this good faith can be demonstrated immediately in the following manner:

1. Premier Vander Zalm agrees to host a meeting of all the Chiefs, Tribal Council Leaders and Provincial Indian Leaders before the end of September 1990;
2. Premier Vander Zalm agrees to the formation of a Task Force or Working Group composed of equal First Nations and Provincial representation with an independent Chairperson to be jointly chosen;
3. Premier Vander Zalm agrees to use his good offices to arrange a meeting with the Prime Minister, himself and First Nations representatives before the end of October 1990;
4. Premier Vander Zalm agrees to completion of the development of a negotiation process by the Task Force or Working Group by the 31st of March, 1991;
5. Premier Vander Zalm agrees to commit resources to an educational process on land claims which will be developed by the Task Force or Working Group;
6. The First Nations and the Provincial governments jointly seek changes to the existing federal comprehensive claims policy in order to facilitate the

process of negotiations and to ensure that the process is open to all First Nations.

7. Premier Vander Zalm agrees to arrive at a prior agreement with Canada in the respective roles and responsibilities of each jurisdiction in regard to negotiations and the "costs," if any, of resolution.

It should be understood that as First Nations in this province we can provide additional details on *how* the process will be developed and *what* issues will be addressed during the development of a framework for negotiations.

Our nations are anxious to proceed with the resolution of the land question.

2. Correspondence

August 27, 1990

Mr. Bill Wilson
Chairman
First Nations Congress
#403 - 990 Homer Street
Vancouver, British Columbia
V6B 2W7

Dear Mr. Wilson:

I am writing in response to the presentation made to me by the Chiefs of the First Nations Congress at our meeting in Vancouver on August 17, 1990.

As I noted at the meeting, the Province of British Columbia is anxious to ensure an early start to land claims negotiations and welcomes the recent steps by the Congress towards this goal.

I want to respond to your suggestions, and outline some of the steps the Province proposes, to effect an orderly and expeditious settlement of land claims.

We are prepared to assist you—and other bands and tribal councils—to carry forward to the Government of Canada for settlement, the various land claims which Indian communities put forth.

I share with you the desire for a meeting, of all Chiefs and tribal council leaders, in September, to continue the process of constructive negotiation of claims. I am prepared to host such a meeting, as you have requested, and propose to bring with me members of Cabinet as an indication of the importance we attach to this undertaking.

So that we may begin the public education you have mentioned is necessary, I believe this meeting must be an open and public forum in which all British Columbians can see the Government and Indian communities discussing this important issue.

In addition, I will use my good offices, as suggested, to encourage the Prime Minister of Canada to participate in a meeting with Chiefs and tribal council leaders in British Columbia, in October. I believe this a worthwhile initiative to ensure the Government of Canada moves with the same purpose and dispatch as the Provincial Government and Indian communities.

The Province of British Columbia has considered for some time, the process, or processes, which might be used to best ensure claims are dealt with in a fair, reasonable and timely manner.

Your organization has made several proposals in this regard, and we have received suggestions from other organizations, Bands, and tribal councils.

I will be announcing today, the creation of a Land Claims Registry to receive all of the claims put forward to Canada by Indian communities. It will be the role of this registry to assess each of the claims and determine their suitability or eligibility for Provincial participation in settlement.

I will also be announcing a new Land Claims Negotiations Office in the Ministry of Native Affairs, to further assist the Federal Government in resolving these claims.

For each claimant group—whether it is a band, tribal council, or an organization of all bands and tribal councils—the Province will examine the best process to achieve results for the particular claim submitted.

Recognizing that there are, as you pointed out, unique differences between the 197 Bands and 30 tribal councils, it may be that the best approach is to have separate processes for different groups. However, we will leave the door open to a unified approach to developing a process for claims settlement under an umbrella approach if we can be assured that Congress speaks for all bands and tribal councils that intend to file a claim.

At this point, it is unclear whether the Union of British Columbia Indian Chiefs—which purports to represent a large number of bands—would be willing to participate in the process you put forward. In addition, we have had separate proposals for a process of settlement from other tribal councils and bands.

I believe bands and tribal councils—many of whom are anxious to start actual negotiations—will welcome the establishment of a Registry and Claims Negotiations Office and the opportunity to have the Province assist them in reaching long overdue land claims settlements with the Government of Canada.

We believe, as you do, that the Federal Government must change its land claims policies to accommodate the realities of British Columbia and we are prepared to work with your members, and other groups, to encourage Canada to get on with that task.

In summary, I look forward to working with the Congress in seeing the September conference take place, in inviting the Prime Minister of Canada to a meeting in British Columbia on the land claims issue in October, and in the resolution of land claims.

Sincerely yours,

William N. Vander Zalm
PREMIER

cc: Honourable Jack Weisgerber
Minister of Native Affairs

Appendix 3

The New Democratic Land Claims Policy

Towards a Just and Honourable Settlement:
Indian Land Claims in British Columbia

British Columbia New Democrats Convention 1990
March 9–11, 1990 • Vancouver B.C.

1. The NDP, the Indian Land Question and Aboriginal Self-Government

The New Democratic Party believes that resolution of the Indian Land Question in British Columbia is a critical political, economic and moral issue that can no longer be ignored. A just and honourable settlement of the Land Question is vital if we are to achieve sustainable economic development for the province as a whole.

Toward this end, the New Democratic Party is committed to:

1. recognition of aboriginal title and aboriginal peoples' inherent right to self-government;
2. provincial participation in modern-day treaty negotiations to achieve a just and honourable settlement of the land question;
3. third-party interest in negotiated treaties on the land question;
4. sustainable economic development initiatives in both aboriginal and non-aboriginal communities resulting from settlement of the land question;
5. renewal of constitutional processes aimed at entrenching aboriginal peoples' inherent right to self-government in the Constitution of Canada.

A. Aboriginal Title and Self-Government

The New Democratic Party is committed to the recognition of both aboriginal title and aboriginal peoples' inherent right to self-government. These two elements are interrelated. Effective self-government requires a clear definition of aboriginal rights to land and resources, as well as a secure economic base created by the exercise of these rights. Aboriginal title and rights to land and resources are meaningless without aboriginal jurisdiction over these lands and resources.

B. Provincial Participation in Negotiations

Settlement of the Indian Land Question in British Columbia will be a priority for the next New Democratic provincial government. We are committed to settling the Land Question through active participation in modern day treaty negotiations between aboriginal peoples, the federal government and the province. Provincial initiative is essential to change the federal government's counter-productive negotiation priorities, break the land claims bottleneck and accelerate the slow pace of the federal negotiation process. Most importantly, provincial initiative is required to dispel the economic uncertainty facing British Columbia's regions.

A New Democrat government will insist that the primary financial responsibility arising from settlement of the Indian Land Question in B.C. rests with the federal government. The precise definition of this responsibility, however, should be determined by separate negotiations between the two levels of government. In proceeding toward settlements, questions about responsibility for financial costs should not be used by either government as an excuse for not negotiating.

C. Third-Party Interests

In negotiating treaties on the Indian Land Question, a New Democrat provincial government will ensure that third-party interests are accommodated, including those of our municipalities. We are committed to carrying out consultations with municipalities and other third-parties to define the nature and extent of their interests and options for their accommodation in negotiated treaties on the Land Question.

The New Democratic Party recognizes that treaty settlements may affect some municipalities' tax revenue base. Given the importance and complexity of this issue, comprehensive discussions about taxation-jurisdiction and revenue-sharing will need to occur among Indian governments, municipalities, the provincial and the federal governments as part of the overall settlement process.

D. Sustainable Economic Development

The New Democratic Party believes that a resolution of the Land Question based on recognition of aboriginal title and aboriginal peoples' inherent right of self-government does not threaten in any way the future economic prosperity of British Columbia's regions. On the contrary, we believe that settlement of the Land Question on this basis represents an unprecedented opportunity for regional economic renewal. We believe that such settlements will:

- inject millions of new federal dollars into communities and businesses throughout British Columbia;

- stimulate sustainable economic development in aboriginal communities, breaking the cycle of poverty and dependence;
- end investment uncertainty and open the door for badly needed resource development to proceed in some regions of the province;
- remove a major obstacle to public land-use planning and resolve conflicts, especially between competing forestry, ranching, recreation and wilderness values;
- end the $100,000,000 plus court cases that are paid for by B.C. taxpayers and tie up our courts unnecessarily.

In short, resolution of the conflicts and uncertainty in the current impasse over the Land Question will provide an historic opportunity for all British Columbians to work together toward long-term, sustainable economic development in our regions.

E. Renewal of Constitutional Processes

A New Democrat government will take the initiative to renew constitutional processes aimed at entrenching aboriginal peoples' inherent right to self-government in the Constitution of Canada. However, in keeping with the unanimous findings of the all-party House of Commons Special Committee on Indian Self-Government (the "Penner Committee"), we are committed to the recognition of such rights in British Columbia regardless of success with constitutional processes at the federal/provincial level.

2. *Background on the Indian Land Question in B.C.*

Since time immemorial, aboriginal peoples have lived in British Columbia in diverse, highly-evolved societies with traditional structures of government. They have depended on the bountiful resources of this beautiful land to sustain their spiritual, cultural, economic and social well-being. This ancient relationship between B.C.'s aboriginal peoples and Mother Earth has produced a rich cultural heritage that is recognized and celebrated around the world.

Yet, in British Columbia, full recognition of this extra-ordinary heritage has been held back by one long-standing political issue: settlement of the Indian Land Question. For over a century, provincial and federal governments have refused to recognize aboriginal title or Indian self-government rights, thus denying B.C.'s aboriginal population the lands and resources needed for sustainable economic and social development. The time has come for British Columbians to redress the mistakes and injustices of the past and chart a better future.

British Columbians have an obligation and, in the 1990s, will have an opportunity to settle the Indian Land Question and fully recognize the unique heritage of the aboriginal peoples of this province.

A. History

The present economic and political character of British Columbia was shaped by the dynamics of frontier settlement in the nineteenth and early twentieth centuries. So too were the present political, economic and social circumstances of B.C.'s aboriginal peoples.

For Indians, frontier settlement meant forcible dispossession from their traditional lands and resettlement on small reserves. With the exception of several tribes on southern Vancouver island and in the far northeast of the province (under Treaty No. 8), reserves in B.C. were established without the negotiation of treaties between the Indian Nations and the Crown.

Arbitrary and insufficient land allotments deprived many Indians and Metis of their villages, cemeteries, fishing, trapping and hunting areas, and places of worship. They were dispossessed of land and resources which could sustain economic development, stripped of their traditional forms of self-government by the *Indian Act*, and punished for practising their traditional cultural ceremonies and pursuing their spiritual beliefs.

Conditions in British Columbia were particularly harsh. Neither the federal nor the provincial government accepted responsibility for redressing the injustices of a system in which B.C.'s aboriginal peoples were denied treaties and were allotted a mere fraction of the acreage received by treaty Indians in other provinces.

B. Economic and Social Consequences

The present social and economic circumstances of many aboriginal communities in British Columbia—structured, virtually intractable underdevelopment—grew directly from the injustice and deprivations of the past 130 years. Symptoms of the current situation are well-documented: high rates of unemployment on most Indian reserves in B.C. (often ranging from 50-80%); widespread poverty; inadequate housing; poor sanitation; malnutrition; high infant mortality rates; high levels of socially-induced stress manifested in domestic violence, child abuse and tragically high suicide rates. In terms of income, living standards and education, aboriginal people represent the single most disadvantaged group in British Columbia.

Without a viable land and resource base, adequate capital, or the power to direct effective economic and community development, many aboriginal people in B.C. struggle for their daily survival. To make matters even worse, the taxpayers of this province underwrite programs and services which, for the most part, support substandard social and economic conditions and stifle initiatives for self-sufficiency.

Throughout this century, B.C.'s Indian Nations have tried to regain a viable land and resource base over which they could exercise jurisdiction for the benefit of their people. Their determination arises not just from the fact that their aboriginal title was never ceded or surrendered through treaties. It also stems from their understanding that aboriginal self-government, through a just settlement of the Land Question, is the only way to ensure long-term economic development and cultural vitality. Moreover, it is the only way that the present uncertainty and conflict over land and resource ownership in B.C. (which impedes B.C.'s economic development) can be overcome.

3. *Government Response*

A. Federal Government: Land Claims and Extinguishment of Aboriginal Title

From Confederation onward, federal government policies have been designed to assimilate aboriginal peoples and destroy their cultures. The Indian Act, which has been used systematically to restructure the political, cultural and economic life of aboriginal peoples, conspicuously ignores such important legal issues as aboriginal title and rights, the Land Question, and the principle of consent to government legislation.

Over the last twenty years, the federal government has gradually recognized that the paternalistic, authoritarian policies of the past have failed to improve the condition of Canada's aboriginal peoples. In addition, Canadian courts have granted increasing recognition to Indians' aboriginal and treaty rights. As a consequence, the federal government has shifted from a refusal to recognize aboriginal title and rights to a reluctant willingness to enter limited negotiations on aboriginal title issues.

Beginning in 1974, the federal government agreed to negotiate what it termed "native land claims." At the same time, the federal government insisted that "land claims settlements" had to result in the surrender and extinguishment of aboriginal title. Progress has been unacceptably slow.

Since 1986, the federal government has been willing to negotiate only up to six "comprehensive land claims" at a time in the entire country. But in B.C. alone there are 17 outstanding comprehensive claims. With the Mulroney government's emphasis on reduced government spending, this bottleneck situation is not likely to improve.

In British Columbia, negotiations have occurred on only one comprehensive land claim: that of the Nisga'a. This claim has been on the negotiating table now for 15 years. At this rate, it could take well over 100 years to settle all of the comprehensive land claims in British Columbia. Clearly, this situation is unacceptable.

The federal government must shoulder the primary responsibility for perpetuating this land claims bottleneck. However, the Mulroney government has been content to hide behind the intransigence of its Social Credit allies in B.C. and evade its responsibilities.

B. Social Credit

i. Position on the Land Question

The record of past and present Social Credit provincial governments has been one of steadfast resistance to recognition of aboriginal title and rights to land, resources and self-government. They have maintained that aboriginal title was extinguished on or before British Columbia's entry into Confederation.

Even if the courts decide otherwise, the Social Credit government maintains that the settlement of Indian land claims is exclusively a federal issue and the province should not get directly involved. Thus, the Social Credit government has refused to participate in negotiations that could lead to a just and honourable settlement of the Land Question.

The position of the Social Credit government on aboriginal title and rights has forced Indians either to wait while the interminable federal land claims process unfolds or to resort to expensive and time-consuming litigation. Even when a group like the Nisga'a have succeeded in getting to the negotiating table with the federal government, the province's jurisdiction over land and resources makes negotiation of a final settlement virtually impossible without provincial participation.

ii. Position on Constitutional Processes

At the 1987 First Ministers' Conference on Aboriginal Rights, Premier Vander Zalm strongly opposed the entrenchment of the aboriginal right to self-government in the Constitution of Canada. This position of the Social Credit government is completely at odds with the unanimous report of the all-party "Penner Committee" in 1983.

iii. Social Credit and the Courts

When Indians have gone to court to speed up the resolution of their aboriginal title and rights issues, they have faced hostile, well-financed intervention by the provincial government. Rather than constructively addressing aboriginal concerns, the Social Credit government has spent millions of taxpayers' dollars to harass Indians in court with spurious legal arguments and diversionary procedural tactics.

iv. Politics of confrontation and failure

In other areas we also see the Social Credit government choosing policies of confrontation instead of cooperation, conciliation and constructive dialogue. In the Stein Valley, the Mt. Currie and Lytton Indian Bands had to threaten road blockades before the Socreds would sit down with them to hear their concerns about clear-cut logging of this pristine watershed. Failing in their initial resistance, the Socreds then tried to put British Columbians against one another over the future of the Stein. That tactic failed too and the resulting situation is now a stand-off.

Recently, the Social Credit government established an Advisory Council on Native Affairs to gather input from aboriginal people on their priorities. The Advisory Council is mandated to talk to aboriginal people about everything of concern *except the Land Question and aboriginal rights.*

Clearly, Social Credit policies have failed and they have no constructive alternatives to put forward. The refusal of the Social Credit government to participate in negotiations on the Land Question, combined with its policies of conflict and confrontation, mean continued uncertainty and missed economic opportunities for all British Columbians.

4. *Habitat Management and the Sharing of Natural Resources*

Negotiated treaties on the Indian Land Question will provide an opportunity to develop innovative resource and habitat management regimes that will benefit all British Columbians. A New Democrat government will be committed to the basic principles of

- resource sharing,
- sustainable economic development,
- recognition of aboriginal self-government

in developing and implementing new habitat management regimes for British Columbia's fish, timber and mineral resources.

In the area of *fisheries*, the prospect of greater aboriginal control has raised fears that fragmented authority will result in increased pressure on fish stocks and a decline in the resource base.

In Washington, Indians' treaty rights have been incorporated into the Washington State management regime and Indians have the authority to limit projects and practices that can cause habitat destruction. In the last fifteen years, this aboriginal jurisdiction has enhanced conservation of the fisheries resource in Washington State.

Forest resources will be an important aspect of negotiated settlements of the Land Question. Indians assert aboriginal title to much of the province's resource base. This is not reflected in the province's current tenure and management regimes, however. Indians are concerned that the current high levels of timber extraction—together with wasteful forestry practices and inadequate reforestation—may deprive them of the benefit of forest resources before settlements are achieved. In addition, they are concerned about the impact of such practices on wildlife habitat and the consequent destruction of traplines, hunting and guiding territories. For these reasons, Indians have resorted to litigation and political action in areas such as Meares Island, the Stein Valley, South Moresby, Deer Island, and the Babine River Valley.

Clearly, removal of the conflict and uncertainty generated by the unresolved Indian Land Question is essential for the future prosperity of the forest industry and the many communities and businesses that depend on this resource.

For both aboriginal and non-aboriginal people to gain maximum advantage from settlement of the Land Question, the former will need to play a greater ownership and management role in the forest industry. Business and technical expertise also will be needed to initiate new value-added processing operations. Supporting aboriginal businesses, as part of a broad strategy for settlement of the Land Question, will stimulate the development of joint business ventures and provide jobs and benefits to all British Columbians.

Mining developments in the province have raised aboriginal concerns in two main areas. The first is control over large-scale development projects that threaten to disrupt or destroy natural habitats upon which the economies and cultures of many aboriginal communities depend. The second is an equitable share of the revenues and benefits from mining development that occurs in Indian territories.

The recognition of aboriginal rights to land, resources and self-government will require provincial policies that support participation by aboriginal people in large-scale resource projects. As in the case of forestry, provincial support for aboriginal-owned mining companies would stimulate new, mutually beneficial join-ventures between aboriginal and non-aboriginal businesses.

5. Urban Indian and Metis Rights

Over 100,000 status Indians, non-status Indians and Metis do not re-side on Indian reserves in British Columbia. Many of these aboriginal people live in our urban and regional centres. Because of the small size and limited economic value of the Indian reserves allotted in British Columbia over the years, the province now has the largest "off-reserve" aboriginal population in Canada.

Aboriginal people often move to our urban and regional centres seeking economic opportunities, adequate housing, health services and educational opportunities not available in their home communities. Relocation involves cultural dislocation, separation from family and friends and trying to adapt to an alien way of life. Moreover, as "off-reserve" aboriginals, they do not qualify for many federal Indian programs and services and must rely on the province to provide basic programs and services.

At present, many off-reserve aboriginal people receive inadequate levels of health, educational and social services. Moreover, these services are often not delivered in ways appropriate to aboriginal peoples' needs.

The New Democratic Party believes that a negotiated settlement of the Indian Land Question, one that enhances the aboriginal land and resource base and recognizes the aboriginal right to self-government, will provide aboriginal peoples with the means to alleviate many of the economic and social problems they face both on and off-reserve.

While negotiations proceed on treaties, however, the next New Democrat provincial government will ensure that *the principle of aboriginal control is respected and that specialized programs and services are designed and delivered by off-reserve and urban aboriginal communities themselves*. This community-based initiative will include health and social services, education programs and support services in provincial schools, child welfare, cultural programs, drug and alcohol rehabilitation, economic development, and other areas of critical need to B.C.'s aboriginal population.

Aboriginal control of specialized programs and services reflects the New Democratic Party's recognition of the distinctive economic, social and cultural rights of the province's off-reserve Indian and Metis communities.

6. *Public Education and the Indian Land Question*

To be successful, settlement of the Indian Land Question and recognition of aboriginal self-government must be acceptable to a majority of British Columbians. Clearly, resolution of this long-standing issue will generate important changes in the province. The New Democratic Party is committed to promoting greater public awareness of aboriginal peoples and their heritage and to disseminating information on the benefits to the province from settlement of the Land Question.

Indian chiefs and other aboriginal leaders have repeatedly expressed their willingness to reach negotiated settlements which are fair to all British Columbians. Greater public awareness is needed to remove many of the misconceptions surrounding this issue. An effective public education and information campaign is essential to foster a climate which will support a just and honourable settlement of the Indian Land Question in British Columbia.

7. *Summary*

The New Democratic Party believes that resolution of the Indian Land Question in British Columbia is a critical political, economic and moral issue that can no longer be ignored.

A just and honourable settlement of the Land Question is vital if we are to achieve sustainable economic development for the province as a whole.

The New Democratic Party is committed to:

1. recognition of aboriginal title and aboriginal peoples' inherent right to self-government;
2. provincial participation in modern-day treaty negotiations to achieve a just and honourable settlement of the land question;
3. third-party interests in negotiated treaties on the land question;
4. sustainable economic development initiatives in both aboriginal and non-aboriginal communities resulting from settlement of the land question;
5. renewal of constitutional processes aimed at entrenching aboriginal peoples' inherent right to self-government in the Constitution of Canada.

Negotiated treaties on the Land Question, coupled with effective structures of aboriginal self-government, are essential to resolving the present uncertainties and conflict over land resource ownership in B.C., which are impeding B.C.'s economic development.

The New Democratic Party believes that the primary financial responsibility arising from settlement of the Land Question in B.C. clearly rests with the federal government.

At the current rate that federal negotiations are proceeding, it could take well over 100 years to settle all of the "comprehensive land claims" in British Columbia! This situation clearly is unacceptable. The Mulroney government must shoulder the primary responsibility for perpetuating this land claims bottleneck and not hide behind the intransigence of its Social Credit allies in B.C.

The record of past and present Social Credit provincial governments has been one of steadfast resistance to recognition of aboriginal title and refusal to negotiate a settlement of the Land Question.

In dealing with the Indian Land Question and aboriginal rights, the Social Credit government has pursued policies of conflict and confrontation, instead of cooperation, conciliation and constructive dialogue. This has meant continued uncertainty and missed economic opportunities for all British Columbians.

Negotiated treaties on the Indian Land Question will provide an opportunity to develop innovative resource and habitat management regimes that will benefit all British Columbians.

A New Democrat government will be committed to the basic principles of resource sharing, sustainable economic development and recognition of aboriginal self-government in developing and implementing new habitat management regimes for British Columbia's fish, timber and mineral resources.

Removal of the conflict and uncertainty generated by the unresolved Indian Land Question is essential for the future prosperity of the forest industry and the many communities and businesses that depend on this resource.

Supporting aboriginal businesses, as part of a broad strategy for settling the Land Question, will stimulate the development of joint business ventures and provide jobs and benefits to all British Columbians.

The New Democratic Party recognizes the distinctive economic, social and cultural rights of the province's off-reserve Indian and Metis communities.

While negotiations proceed on the Land Question, the next New Democrat provincial government will ensure that the principle of aboriginal control is respected and that specialized programs and services are designed and delivered by off-reserve and urban aboriginal communities themselves.

Appendix 4

The Federal Government's Comprehensive Land Claims Policy

Introduction

Aboriginal peoples have always claimed a special relationship to the land as the basis for their cultural distinctiveness and special aboriginal status. Recognition of this relationship through the settlement of claims based upon aboriginal title is a fundamental objective of aboriginal peoples. The fair and equitable resolution of such claims is also a major priority of the Government of Canada.

There is no clear definition of the term "aboriginal title." For aboriginal peoples, the term is bound up with a concept of self-identity and self-determination. For lawyers, it is one which has been referred to in case law for many years, but which has eluded judicial definition. For many non-aboriginal Canadians, it is a term that evokes a wide range of reactions, from sympathy to concern.

Although Canadians have inherited the uncertainty and the legal ambiguities surrounding "aboriginal title," they have also inherited a way for addressing such ambiguities: treaty-making. From colonial times, and into the first half-century of Confederation, the Crown entered into treaties with aboriginal peoples to define the respective rights of the parties to the use and enjoyment of lands traditionally occupied by aboriginal people. In the aftermath of the 1973 Supreme Court of Canada decision in the case of *Calder v. the Attorney General of British Columbia,* the tradition of treaty-making was renewed in the form of a comprehensive land claims policy. In August 1973, the Minister of Indian Affairs and Northern Development announced that the government was prepared to negotiate comprehensive land claims with aboriginal groups where their traditional and continuing interest in the lands concerned could be established. In return for this interest, an agreed form of compensation or benefit would be provided to the aboriginal group concerned.

Large parts of Canada continue to be used by aboriginal groups living in their traditional territories. The basis for any comprehensive land claims policy, therefore, is self-evident. It is the fulfillment of the treaty process through the conclusion of land claims agreements with aboriginal groups that continue to sue and occupy traditional lands and whose aboriginal title has not been dealt with by treaty or superseded by law.

The federal government's approach in this important matter has been to seek to clarify the land and resource rights of aboriginal claimants, governments and the private sector, through the negotiation of settlement agreements. Through such negotiations, a range of land and resource-related matters has been addressed, including land ownership, and the right to the use and management of wildlife and renewable resources. Other topics directly or indirectly linked to land and resources have also been dealt with in the context of these negotiations. Claims settlements have thus provided an opportunity for government and claimants to redefine the most fundamental aspects of their relationship by a process of negotiation.

The last review of the comprehensive land claims policy occurred in 1981. Since that time, there has been growing dissatisfaction with certain features of the policy. Serious concern has been expressed at the rate of progress in negotiations and at the growing inconsistency between comprehensive land claims policy and other federal policy initiatives. Aboriginal groups have particularly objected to the practice of seeking to extinguish all aboriginal rights and interests in and to the settlement area in exchange for the benefits provided through the settlement agreement. They have been concerned that other rights, that may be unrelated to the disposition of lands and resources, might be affected in the process. Further, they have seen this "blanket extinguishment" approach as inconsistent with the constitutional recognition and affirmation of existing aboriginal rights in section 35 of the *Constitution Act, 1982* and with the process of seeking to define such rights in constitutional discussions.

To deal with such concerns, to ensure consistency with other policy positions, particularly on aboriginal self-government, and to expedite negotiations, the Government of Canada adopted a revised comprehensive land claims policy in December 1986. To address these matters, the revised policy contains provisions for new approaches to the cession and surrender of title, self-government, wildlife and environmental management, the inclusion of offshore areas in negotiations, resource revenue-sharing and negotiating procedures. Where no changes have been made in the policy and procedures, the provisions of the previous policy will remain in effect.

This revised policy will guide the federal government's approach in all negotiations, which will take place without prejudice to the legal rights of the parties. However, the unique circumstances of each claim will be taken into account by the government in applying the policy in individual cases. As part of this process, discussions will be held with claimant groups, territorial governments and of course, where their interests are affected, with provincial governments. Completed settlements and treaties will not be reopened or affected by the policy changes.

This booklet sets out the elements of the revised policy. It is not a statement of law. The procedures to be followed in submitting and negotiating the settlement of land claims are also described. There are six main sections: objectives; scope of negotiations; self-government; involvement of provincial and territorial governments; protection of aboriginal and non-aboriginal interest; and procedures.

Objectives

The Government of Canada is committed to the resolution of comprehensive land claims through the negotiation of settlement agreements. Such agreements must be equitable to aboriginal people and other Canadians, and must represent final settlements of land claims.

The purpose of settlement agreements is to provide certainty and clarity of rights to ownership and use of land and resources in those areas of Canada where aboriginal title has not been dealt with by treaty or superseded by law. Final settlements must therefore result in certainty and predictability with respect to the use and disposition of lands affected by the settlements. When the agreement comes into effect, certainty will be established as to ownership rights and the application of laws. Predictability will be established for the future as to how the applicable provisions may be changed and in what circumstances. In this process the claimant group will receive defined rights, compensation and other benefits in exchange for relinquishing rights relating to the title claimed over all or part of the land in question.

However, it is recognized that land claims negotiations are more than real estate transactions. In defining their relationships, aboriginal people and the Government of Canada will want to ensure that the continuing interests of claimants in settlement areas are recognized. This will encourage self-reliance and economic development as well as cultural and social well-being. Land claims negotiations should look to the future and should provide a means whereby aboriginal groups and the federal government can pursue shared objectives such as self-government and economic development.

The federal government will also seek to ensure consistency between the comprehensive land claims policy and other federal policies for aboriginal people, for the Northwest Territories and Yukon, and for Canada as a whole. In addition, an equitable application of the policy means that the overall fairness of settlements must be ensured.

Scope of Negotiations

As the main purpose of comprehensive land claims negotiations is to clarify rights in relation to lands and resources, land and resource-related topics will provide the principal focus of negotiations. However, claims settlements are also a means whereby aboriginal groups can obtain some of the tools to capture economic opportunities and establish the means whereby they can make decisions about future renewable resource use. Other issues related to land and renewable resource management, as well as the interests of other affected parties, will also be an integral part of negotiations.

The Government of Canada is therefore prepared to address a range of issues within the framework of the policy. These can include land selection, self-government, environmental management, resource revenue-sharing, hunting, fishing and trapping rights, and other topics. The precise choice of topics that the parties agree to discuss in negotiations, and the parameters of these negotiations, will be identified in individual cases in framework agreements which will be negotiated in the preliminary negotiations.

Alternatives to Extinguishment

Above all other issues, the requirement that aboriginal groups agree to the extinguishment of *all* aboriginal rights and title as part of a claims settlement has provoked strong reactions from aboriginal people. The federal government has examined this feature of the former policy carefully and has concluded that alternatives to extinguishment may be considered provided that certainty in respect of lands and resource is established.

Acceptable options are:

(1) the cession and surrender of aboriginal title throughout the settlement area in return for the grant to the beneficiaries of defined rights in specified or reserved areas and other defined rights applicable to the entire settlement area; or

(2) the cession and surrender of aboriginal title in non-reserved areas, while:

- allowing any aboriginal title that exists to continue in specified or reserved areas;
- granting to beneficiaries defined rights applicable to the entire settlement area.

In advancing these proposals, certain steps will be followed. The particular approach to be used to obtain certainty will be discussed in individual negotiations and the precise wording will be subject to agreement between the parties. The Department of Justice will be consulted so that the legal implications of the approach and language used to attain certainty are properly understood. In those cases where provincial lands are involved, the province must play a major part in determining the approach to be followed.

It is important to recognize that the aboriginal rights to be released in the claims process are only those related to the use of and title to land and resources. Other aboriginal rights, to the extent they are defined through the constitutional process or recognized by the courts, are not affected by the policy.

Lands

The land area claimed by an aboriginal group will be a key subject for the negotiations. Lands selected by beneficiaries for their continuing use should be traditional terrestrial lands that are currently used and occupied.

Where more than one claimant group utilizes common areas of land and resources, and the claimants cannot agree on boundaries, resource access or land-sharing arrangements, no lands will be granted to any group in the contested area until the dispute is resolved.

In cases where a claimant group currently utilizes resources in a province or territory other than that in which its communities are located, the range of benefits available to the group outside the province or territory of residence will be determined by negotiation with the province or territory involved and with any other aboriginal groups which can establish competing claims to the land. The content of such negotiations will be identified in framework agreements.

Offshore Areas

In many cases, the areas traditionally used by aboriginal groups to pursue their way of life include offshore areas. In such cases, negotiations concerning harvesting rights in offshore areas will be conducted, to the extent possible, in accordance with the same principles as those which apply to terrestrial areas. Participation in environmental management regimes and resource revenue-sharing arrangements may also be negotiated with respect to offshore areas.

Wildlife

The continuing economic, social and cultural importance of hunting, fishing and trapping for many aboriginal communities is recognized by the federal government. Accordingly, settlements may provide for preferential wildlife harvesting rights for beneficiaries on unoccupied

Crown lands. There may be exclusive harvesting rights exercised by settlement beneficiaries on selected lands, or preferential rights for particular species throughout the settlement area or within specified parts of the settlement area. In all cases, settlements will clearly define the terms by which beneficiaries will have access to wildlife resources.

Unless otherwise provided for in the terms of settlements, laws of general application respecting hunting, fishing and trapping activities, including public safety and conservation measures, will apply to beneficiaries.

Subsurface Rights

Subsurface resources fall within either federal or provincial jurisdiction. In areas of federal jurisdiction, subsurface rights on some federal Crown lands and on settlement lands held by beneficiaries may be provided through claims settlements.

Granting subsurface rights close to communities, or in critical wildlife habitat areas, would serve as a way to avoid land use conflict in key areas. Such subsurface rights may also, in appropriate circumstances, provide beneficiaries with the opportunity and incentive to participate in and benefit from resource development.

Resource Revenue-Sharing

Many claimants live in areas of Canada where the development of nonrenewable resources is and will remain a major economic activity. In order that beneficiaries may share in the revenues from such developments, the federal government is prepared to negotiate resource revenue-sharing arrangements with claimant groups. Such arrangements would provide a percentage of federal royalties derived from the extraction of resources in the settlement area, including offshore areas.

Revenue-sharing arrangements will not imply resource ownership rights, and will not result in the establishment of joint management boards to manage subsurface and sub-sea resources. In addition, the federal government will maintain responsibility for resource revenue instruments and must maintain its ability to adjust the fiscal regime.

Resource revenue-sharing may be subject to limitations either by:

- an absolute dollar cap; or
- a time cap of not less than fifty years from the first payment of the royalty share (which arrangements will be renegotiable); or
- a reducing percentage of royalties generated.

Any negotiations or arrangements between the federal and territorial governments regarding possible resource revenue-sharing must respect any arrangements made in this regard through claims settlements. The federal government will consult affected claimant groups regarding the implications for unresolved claims of any proposed federal-territorial arrangements on resource revenues.

Environmental Management

Settlements are expected to recognize particular aboriginal interests in relation to environmental concerns particularly as these concerns relate to wildlife management and the use of water and land. Provision for the exercise of such interests may be afforded through membership on advisory committees, boards and similar bodies or through participation in government bodies that have decision-making powers. Such arrangements must recognize that the government has an overriding obligation to protect the interest of all users, to ensure resource conservation, to respect international agreements, and to manage renewable resources within its jurisdiction.

Compensation

Monetary compensation may comprise various forms of capital transfers, including cash, resource revenue-sharing, or government bonds.

Where applicable, the amount will be clearly defined in the agreement, and no advance on the monetary compensation components of settlements will be provided before final settlement is reached. The amount of compensation may be adjusted depending upon other arrangements negotiated in settlement agreements. For example, the amount of cash compensation may be reduced in accordance with arrangements concerning resource revenue-sharing. Outstanding debts owed by the claimant group to the federal Crown will be deducted from final settlements.

Management of Settlement Assets

Corporate structures provided for in settlements must be designed by claimant groups to provide for the protection and enhancement of settlement assets based on sound management practices and democratic control by the beneficiaries.

Programs

Beneficiaries of land claims settlements will retain their eligibility for government programs. Benefits received under such programs will be determined by general program criteria established from time to time.

Taxation

Cash compensation payable under a settlement will be regarded as a capital transfer and will be exempt from taxation. However, any income derived from such compensation will be subject to the provisions of the *Income Tax Act*. Other elements of compensation, such as a share of resource revenues, will be subject to prevailing taxation legislation and practices.

Unimproved lands may be exempted from property taxation except in relation to municipal services.

Beneficiaries

Those who benefit from settlements must be Canadian citizens of aboriginal ancestry from the settlement area, or their descendants, or other persons as defined by mutually-agreed criteria. Beneficiaries cannot have previously benefitted from another comprehensive claims settlement.

The definition of beneficiaries will not affect the status of persons pursuant to the *Indian Act*.

Self-Government

The previous comprehensive land claims policy allowed for the negotiation of self-government on a local basis. This meant that a limited range of local institutions could be established by statutory means in a settlement area. The inclusion of a broader range of self-government matters in claims negotiations became an increasingly important issue as a result of recent governmental initiatives and policies respecting self-government. In reviewing this feature of the policy, a major consideration was to ensure consistency between this policy and other government measures.

Self-government has been referred to as the key to change for aboriginal peoples. The federal government's policy approach to self-government is to acknowledge the desire expressed by communities to exercise greater control and authority over the management of their affairs. This may result in the establishment of different types of institutions in different parts of the country which reflect the particular circumstances of each distinct aboriginal group or community. The objectives of the government's policy on community self-government are based on the principles that local control and decision-making must be substantially increased; that flexibility is needed to recognize diverse needs, traditions and cultures; and that greater accountability to community members must be achieved. Any particular approach to community self-government must respect existing constitutional principles and be consistent with government practices.

In the territories, self-governing objectives are also being advanced through institutions of public government and through the representation of aboriginal people on governing bodies that manage discrete activities or which have broad governing authority over activities in a given area or region. In this way, political rights would not be reserved exclusively to aboriginal people, but aboriginal interests would be incorporated and represented in institutions of public government.

In the context of the comprehensive land claims policy, self-government is an issue that is tied closely to the expressed need of aboriginal peoples for continuing involvement in the management of land and resources as well as in the development of self-governing institutions that recognize their place in Canadian society. The circumstances in which the negotiation of self-government matters in claims areas would be appropriate could include community-based self-government regimes on designated lands. In other cases, measures which support the direct participation of aboriginal representatives in management boards could be adopted to ensure appropriate representation of interests in decision-making processes, subject to the application of such federal and provincial legislation to those areas.

The precise nature of self-government matters to be negotiated will need to be set out in framework agreements. In keeping with the federal government's general policy on self-government, aboriginal people themselves will play the major role in defining the content of self-governing arrangements, subject to existing constitutional principles and practice. The actual negotiation of self-government institutions will occur pursuant to the agreement. Legislation will be required to establish the scope of law-making authority granted to any new institutions or bodies. Finally, as a matter of policy, most aspects of such arrangements will not receive constitutional protection unless a constitutional amendment to this effect is in force.

Involvement of Provincial and Territorial Governments

The federal government has jurisdiction in relation to Indians and Indian lands. Most other lands and resources, except in the territories, fall under provincial jurisdiction. For this reason, the participation of provincial governments in the negotiation of claims within their jurisdiction will be strongly encouraged and is essential to any negotiation of settlements involving areas of provincial jurisdiction or provincial lands and resources. Consistent with this approach, the federal government maintains the position that provincial governments should contribute to claims settlements in exchange for the certainty of title they receive through them.

In the territories, lands and resources fall under federal jurisdiction. Negotiations in these areas will be bilateral in nature leading to federally-legislated settlements complemented by territorial legislation as required. Territorial governments will participate fully in the application of land claims policy and in negotiations, under the leadership of the federal government.

Protection of Aboriginal and Non-Aboriginal Interests

Settlements must respect the rights and interests of aboriginal and non-aboriginal people alike. Through the negotiating process, claimants will have an opportunity to participate actively in the equitable reconciliation of these interests.

Aboriginal Rights

It is important to re-emphasize that under this policy, only land-related rights are at issue in negotiations and may be affected by the measures used to establish certainty in settlements. Any other rights which may exist will remain unaffected by comprehensive land claims agreements.

Appropriate interim measures may be established to protect aboriginal interests while the claim is being negotiated. These measures will be identified in initial negotiating mandates in specific cases.

Public and Third Party Interests

In attempting to define the rights of aboriginal people, the Government of Canada does not intend to prejudice the existing rights of others. The general public interest and third party interest will be respected in the negotiation of claims settlements and, if affected, will be dealt with equitably. Provision must be made for protecting the current interests of non-aboriginal subsistence users and for the right of the general public to enjoy recreational activities, hunting and fishing on Crown lands, subject to laws of general application.

Information about the general status and progress of negotiations will be made available to the public. In addition, part of the mandate of federal negotiators will be to maintain appropriate and effective communication with those third parties whose interests are directly connected to issues under negotiation.

Public Access

Settlements will provide for innocent public access to selected or retained aboriginal lands and for right-of-way for necessary public purposes. Access rights pertaining to transportation routes in and through the settlement area must also be provided for.

Holders of subsurface rights must have access to settlement lands, where necessary, for the exploration, development and production of resources. The exercise of such rights will be subject to fair compensation as determined through timely negotiations or by arbitration.

Lands granted to beneficiaries through settlements will be protected from the exercise of unlimited expropriation powers.

Procedures

Statement of Claim

The claims process begins with the preparation of a statement of claim and appropriate supporting material by the claimant group. A statement of claim should contain the following elements:

(1) a statement that the claimant group has not previously adhered to treaty;
(2) a documented statement from the claimant group that it has traditionally used and occupied the territory in question and that this use and occupation continues;
(3) a description of the extent and location of such land use and occupancy, together with a map outlining the approximate boundaries;
(4) identification of the claimant group including the names of the bands, tribes or communities on whose behalf the claim is being made, the claimant's linguistic and cultural affiliation, and approximate population figures for the claimant group.

Acceptance of Claims

Upon receipt of a statement of claim, the Minister of Indian Affairs and Northern Development will review the submission and accompanying documentation and seek the advice of the Minister of Justice as to its acceptability according to legal criteria. The claimant group will be advised by the Minister of Indian Affairs and Northern Development, within twelve months, as to whether the claim is accepted or rejected. In the event that a claim is rejected, reasons will be provided in writing to the claimant group.

Preliminary Negotiations

Negotiations towards the development of a framework agreement will be initiated when the Minister of Indian Affairs and Northern Development judges the likelihood of successful negotiations to be high, the settlement of claims in the area to be a priority, and where active provincial and territorial involvement may be obtained as necessary. Negotiations will be conducted only with groups duly mandated by the claimants they represent, to the satisfaction of the Minister.

Senior federal negotiators will be appointed by the Minister from within or outside the public service, as appropriate, and will receive initial negotiating mandates from the federal government.

Bilateral discussions will be held with the provincial or territorial governments concerned regarding their participation in negotiations.

Framework Agreements

Framework agreements will be negotiated and will determine the scope, process, topics, and parameters for negotiation. Approaches to obtaining certainty with respect to lands and resources, and the order and timeframe of negotiations will also be provided for in the framework agreements.

Framework agreements, and substantial changes to them, will be considered and approved by the federal government.

Agreements-in-Principle

Agreements-in-principle will require endorsement by the claimant group. This may be provided by resolutions of assemblies or by band council resolutions.

Agreements-in-principle will also be considered and approved by the federal government.

Final Agreements

Final agreements, accompanied by implementation plans, will require the approval of the federal government and must be formally ratified by the aboriginal claimants.

Settlement legislation will be passed to give effect to the agreements reached.

Implementation

Final agreements must be accompanied by implementation plans.

All elements of agreements related to land, title, quantum of resources (where applicable) and financial arrangements will be final.

Provisions relating to management and decision-making agencies will be subject to review from time to time, as agreed, and subject to legislative amendment where the parties agree that specific provisions are unworkable, obsolete or no longer desirable.

The negotiating process will take account of the federal regulatory reform policy and Citizen's Code of regulatory fairness, and the final agreements and implementation plans will provide for regulatory impact assessments.

Comprehensive land Claims Steering Committee

A committee composed of Assistant Deputy Ministers from government agencies and departments most involved in claims negotiations will be established. The committee will review and provide advice to Ministers on negotiating mandates, the negotiating process, framework agreements, agreements-in-principle and final agreements.

Appendix 5

Prime Minister Brian Mulroney on Canada's Indian Policy

Notes for an Address to the House of Commons
by Prime Minister Brian Mulroney
on the House Resolution with Respect to OKA

September 25, 1990

Since July, television has been bringing into Canadian homes alien images of barricades and masks and assault rifles. A dispute that began in Oka over land was hijacked by a group of heavily armed people, motivated by ideology and seeking to protect illegal commerce.

Their tactics have been the tactics of terrorists. High-powered weapons, threats against the authorities, trade in contraband goods, intimidation of law-abiding Mohawks, interruption of transportation, and destruction of property disqualified any claim the Warriors had to represent the grievances of law-abiding Indians. What is taking place at Oka is not civil disobedience; it is violent activity that no community should be expected to tolerate.

The ostensible reason for the conflict at Oka was long ago removed when, in July, we acquired the disputed land for the Mohawks of Kanesatake. This step, incidentally, is in keeping with the goals of the framework agreement concluded a year ago this month between the Mohawks of Kanesatake, the town of Oka and the federal and provincial governments, an agreement repudiated in March by the Mohawks.

What has been at issue these past weeks, then, is not the land. Rather, the Warriors, advised by foreign legal counsel, have been seeking recognition that their communities are independent, that the laws of Canada do not apply to their lands and to their activities, which include smuggling and gambling. They have sought by various means to circumvent the Canadian justice system.

The Warriors' demands are not simply ideas on which reasonable people can disagree—or simply agree to disagree. They strike at the heart of what Canada is all about. The Warriors have been acting as if the concept of native self-government means national independence.

I will be very clear on this point. Native self-government does not now and cannot ever mean sovereign independence. Mohawk lands are part of Canadian territory—and Canadian law must and does apply. Everyone in Canada, "warriors" included, is subject to the Criminal Code of Canada. If exceptions to the Criminal Code were made on the basis of colour, race or creed, where could the line be drawn in a country as diverse as Canada? What could be more repugnant in a democracy than a legal system based on birth rather than equality?

There are many non-violent avenues—political and judicial—open to people in this country to promote change. The Warriors have opted for firearms and violence, instead. Two Mohawks were killed in a dispute over gambling at the Akwesasne reserve last Spring. Corporal Marcel Lemay of the Sûreté du Québec was killed in the police assault on the barricades last July. These are the consequences when people decide that the law does not apply to them.

Conferring on the claims of the Warriors the legitimacy of the grievances of Canada's aboriginal peoples does the latter's cause an enormous disservice. And glorifying violence and romanticising those who have recourse to it does democracy, itself, a terrible wrong. Masks and guns make compelling pictures—and raise ratings and circulation. But they don't equate to noble purpose.

The armed forces have brought the barricades down and are gradually turning their responsibilities over to the Sûreté du Québec. As this phase-out begins, I think all Members would agree that perhaps the most edifying aspect of this whole tragic episode has been the professionalism of the Canadian Armed Forces.

The Canadian Forces, from General de Chastelain to Lieutenant-General Foster to Brigadier-General Roy are to be commended for the level of professionalism that has been evident throughout. Lieutenant Colonel Robin Gagnon at Kahnawake, Major Alain Tremblay at Oka, Private Patrick Cloutier—the young soldier who stood his ground coolly in a face to face challenge—and all the other personnel of 5 Brigade showed great courage and almost superhuman self-control in the face of extraordinary provocation. They have earned Canadians' respect and gratitude for a difficult job well done.

The hold-out warriors have retreated to a small piece of land around the Oka detoxification centre. There are no plans to attack the centre. No one is being interned there—least of all the innocent children who should be in school. They are welcome to leave at any time. The armed people behind the razor wire can either lay down their weapons and accept the offer of the Canadian Forces to be placed in custody. Or confine themselves in the detoxification centre indefinitely. Either way, the ultimate result will be the same—they will have to submit themselves to the Canadian criminal justice system.

Members of this House have an opportunity, today, to speak with one voice in calling upon the Warriors to lay down their arms and submit themselves to the Canadian justice system. Once the guns are down, we will be in a position to hand the disputed land over to the people of Kanesatake. We will, also, be free to explore new ways to resolve their historical land claims. In the meantime, there is much to do—and many legitimate grievances to address—elsewhere in Canada.

Over the past year we have been quietly discussing an agenda with native leaders to address issues of concern to all of Canada's native peoples. It is time to begin to put this agenda into operation. Canada's aboriginal peoples deserve a special place in this country as our first citizens, based on the aboriginal and treaty rights recognized in the Constitution.

Our agenda will be anchored in reality. It is no myth that native peoples have too often been treated insensitively, unfairly, and, at times, even illegally, since the days the first Europeans set foot on this continent. Canadian history records that Indian decency was too often met with cynicism and that Indian generosity was too often repaid with exploitation.

The cultures of Canada's native peoples have been poorly understood and little valued. Many people still remember Indian children being punished at school for speaking their own languages. The first Canadians were denied freedom of speech in their own land. Thanks to the Indian Act of 1876, people who had never known national boundaries found they could not leave their reserves without a pass. Only in 1960 were Canada's Indians fully enfranchised—by the Government of the Rt. Hon. John Diefenbaker.

The first Canadians were the last to get the vote. And, it is a further reality that contemporary Canadians do not need to scour their history books for examples of the racism, paternalism and dependency that have been so destructive of native peoples' welfare and self-respect. There is ample evidence that things remain seriously wrong to this day: for example, and most recently the injustice done to Donald Marshall Jr., the Micmac from Nova Scotia. These failings sully our reputation and stain our history.

If progress requires that we acknowledge historical realities, it also demands that we acknowledge contemporary realities as well. One of these realities is that Canada's aboriginal peoples benefit, as all Canadians benefit, from being part of a socially progressive and economically prosperous country. Canada's native people enjoy the same rights as all Canadians under the Constitution and they enjoy special rights available only to them.

In recent years, Canada's aboriginal peoples have made progress. Consider the following excerpts from a statement by Mr. Georges Erasmus, National Chief of the Assembly of First Nations in his annual report to his fellow chiefs meeting in Whitehorse this past May:

"In the past twenty years, the landscape has changed a lot for us," said Mr. Erasmus. "I can sum it up by saying that we have taken a good deal of control over our lives and affairs as First Nations persons. Just look at where we were in 1970; all funding was controlled by the federal government through the Department of Indian Affairs (DIAND); now, 20 years later, we're managing the bulk of our finances.

In education, there's a tremendous number of schools now under our control; 20 years ago, either DIAND or the churches were in total charge. In 1970, we didn't have as many as 1,000 post-secondary students; today, there are nearly 17,000! (In fact, our figures show 18,500).

On-reserve housing continues to be a major concern but even here there has also been improvement in the past couple of decades."

Chief Erasmus is right that despite the poverty that is too prevalent on too many reserves, progress is being made. More than 30 percent of the current Indian housing stock has been built since 1984 and a further 35 percent has been extensively renovated since then.

There has been progress in other spheres, as well. For example, in 1960, the life expectancy of status Indians was 60; by this year it had reached 70. In 1960, the infant mortality rate was 82 per thousand live births; by this year it had reached 13.

These figures are not as good as the comparable figures for non-native Canadians—and they are not, therefore, good enough—but they do illustrate that encouraging progress has been made. It is also encouraging that while there were very few Indian-owned businesses on reserves in 1960, there are over 5000 of them today.

Progress by Canada's native peoples in persuading the courts to endorse their aboriginal rights to the land has also been substantial. In 1973, following the rejection by the native peoples of the then government's white paper, the Supreme Court's "Calder" decision led to a re-evaluation of policy with respect to land claims.

Substantial progress has been made since then, in resolving comprehensive land claims. I am referring to a series of agreements reached on claims with the Conseil Attikamek-Montagnais in June 1988, with the Nisga'a Tribal Council in July 1989, with the Council of Yukon Indians in March 1990, with the Dene-Métis in April 1990 (although some Dene have subsequently sought changes), and, with the Inuit of the Eastern Arctic in April 1990. The Arctic claims, if ratified by all concerned, will put 575,00 square kilometres of land firmly and irrevocably under Indian and Inuit ownership, and transfer more than $1.3 billion to them. Together, the land area passing into Indian and Inuit ownership is more than the combined area of the four Atlantic provinces and will make the northern natives the largest landowners in North America. So, progress is being made working within the law.

On the constitutional agenda, progress on aboriginal issues, as on other issues, has proved more difficult. Neither proposals the federal government made on aboriginal self-government nor others made by provincial governments and aboriginal groups have been able to attract sufficient support to result in a constitutional amendment. And this summer, the planned series of First Ministers' Conferences dedicated to matters of interest to aboriginal peoples died with the failure of the Meech Lake Accord. These setbacks aside, the Constitution, and the growing body of case law based on it, have strengthened the rights of aboriginal Canadians. Nevertheless, no one doubts that we still have a very long way to go.

I would like to outline the course my government plans to follow to preserve the special place of our first citizens in this country, based on their aboriginal and treaty rights recognized in the Constitution. The agenda will have four main pillars: land claims; the economic and social conditions on reserves; the relationship between aboriginal peoples and governments; and, concerns of Canada's aboriginal peoples in contemporary Canadian life.

Consultation with aboriginal peoples and respect for the fiduciary responsibilities of the Crown toward them will be built into the process from the start. But we intend to go far beyond the status quo. On no issue is action more urgent than on land claims. We intend to take three parallel initiatives—the first will be, to accelerate the settlement of "specific claims"; that is, those claims that result from past government non-performance or malfeasance with respect to existing treaties and to the Indian Act. We recognize that increased resources will be essential to make good on this undertaking and they will be provided.

The second initiative we will take is to ensure that the legal undertakings regarding land transfers to treaty Indians, given as much as a century ago, will finally be honoured. We have already reached agreement with the Government of Saskatchewan and with the Federation of Saskatchewan Indian Nations to begin negotiations. We are eager to initiate the same process in Alberta and Manitoba.

And, third, we will accelerate negotiations on modern treaties, the comprehensive claims, which until now have had to be limited to six at any one time. Comprehensive claims are negotiated where aboriginal title has never been legally ceded to the Crown, thus clouding land title for natives and non-natives alike. Most of the outstanding claims are in British Columbia. In July, Premier Vander Zalm reversed a decades-old British Columbia policy—pursued both by NDP and Social Credit Governments—opposing provincial participation in such claims negotiations.

To accelerate claims settlements, the federal government will no longer limit itself to handling six claims at any one time. And we will consider other innovations such as regional or province-wide negotiations.

The second dimension of the government's agenda will be addressed to improving living conditions on Indian reserves. We are prepared to work jointly with Indian leadership and provincial governments on a range of improvements in basic community programs and services, such as water and sewage facilities so urgently required in many areas across Canada. We will expect those native communities with the resources to take on increasing responsibility for financing enhanced services and economic development.

Ensuring that all native Canadians have opportunities comparable to those of other Canadians to participate in the growth and prosperity of this country is not an easy task. Federal and provincial governments already spend far more money on native peoples' programs than any other country in the world—the federal budget alone is over $4 billion a year—and still terrible problems persist. Progress requires more than money. Progress will only be made if the degrading, antiquated and wasteful statutory relationship between Indian peoples and the government is changed.

The Indian Act is largely unchanged since the Victorian age. It fosters Indian dependency on the state, frustrates Indian self-sufficiency and undermines Indian self-respect. It diminishes Indians and non-Indians alike. In the new year, building on work that is going on now with Indian leadership, we will bring in the first of many changes to the Indian Act. Consultation, and respect for the fiduciary responsibilities of the Crown toward aboriginal peoples, will be built into the process from the start. But we intend to go far beyond the status quo.

The objective will be the enlargement of aboriginal capacity for self-government, within the framework of the Canadian Constitution. While it is not perfect, the Constitution is sufficiently flexible to afford aboriginal people ample opportunity to develop their communities, enhance their social and education systems and build their economies—in short, to live their lives according to their own cultures. For example, this government will find practical ways to ensure that aboriginal communities can exercise greater control over the administration of justice.

Self-government can mean a new relationship between aboriginal and non-aboriginal Canadians based on human dignity, trust and respect, all within Canada's Constitution and protected by Canada's laws. Building such a relationship requires the understanding and support of all Canadians. That is why, later this fall, we intend, as part of a broader initiative on Canadian unity, to seek a thorough review of the fundamental place and role of aboriginal peoples in contemporary Canada.

The agenda I have outlined is very far-reaching. Its goal is to create a new relationship between aboriginal and non-aboriginal Canadians. It will take creativity and perseverance. It will take courage to see things as they are, honesty to acknowledge them for what they have become and the common resolve to correct them for future generations.

Most of all, it will take sustained and firm leadership on the part both of governments and of aboriginal peoples. But, with native and non-native Canadians working together, it can be done. And I give Canadians the assurance of the Government of Canada that every effort will be deployed to ensure that it will be done.

Appendix 6

A Third Party Perspective:
The Forest Industry

Native Indian Land Claims in British Columbia:

A Background Paper

Prepared by The Council of Forest Industries of British Columbia
Revised 1989

Council of Forest Industries of British Columbia

The Council of Forest Industries of B.C. (COFI) is a trade association whose members and affiliates produce a range of forest products including: lumber, pulp, newsprint, paper, plywood, shingles and shakes, and other higher value-added products. Products are marketed in Canada, the United States, and elsewhere throughout the world, notably in Japan, United Kingdom, continental Europe, China, and Australia.

COFI provides services for its membership and affiliates in the field of trade promotion, transportation, quality control, government and public affairs, forestry and environment, occupational safety and health, and economics, statistics and energy.

Member companies and affiliates account for over 90 percent of the value of forest products produced in British Columbia.

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I. Introduction

In recent years, Indian land claims and assertions to aboriginal title have achieved growing prominence in British Columbia. Regions such as the Nass Valley, South Moresby, Meares Island, the Skeena Valley and the Stein River watershed have become focal points for confrontations between the land use authorized by the provincial government, and the desire by Indians to assert aboriginal title over vast tracts of British Columbia land. The historical origins of the issue are simple. Its ramifications for the forest industry and the B.C. economy are complex, and potentially far-reaching.

This background paper summarizes the land claims issue to date. It briefly examines the position of the federal government, the government of B.C., and the Indians on the issue of comprehensive claims. It includes an inventory of current and pending land claims in B.C., an update on the status of some high-profile controversies, and a chronology of key dates in the development of the issue. It considers some of the questions raised by the land claims debate, and implications for the B.C. forest industry.

A. Historical Basis for Native Land Claims/Aboriginal Title

Land claims and aboriginai title are interrelated concepts linked to historical land use and occupancy, and to a special relationship with the land which Indians say has existed since time immemorial.

Traditional use and occupancy of land is often cited as the basis for Indian assertions of special aboriginal rights. In what is today British Columbia, Indian tribes enjoyed exclusive use of the land until Spanish explorers and British fur traders came to the Pacific coast in the mid 1770s. European settlement eventually had the effect of curtailing Indian use of, and access to, lands and resources, but Indians say they never relinquished their title nor were they ever conquered in battle. No government—colonial, provincial or federal—had ever taken explicit legislative steps to extinguish Indian title.

King George III—at the time unaware of the existence of the west coast of North America—put his signature to a document that today often is cited as one of the foundations for Indian claims to British Columbia. The **Royal Proclamation of 1763** decreed that: "it is just and reasonable. . . . the several Nations or Tribes of Indians with Whom we are connected. . . . should not be molested or disturbed in the Possession of. . . . their Hunting Grounds. . . . which, not having been ceded to or purchased by Us. . . . are reserved to the said Indians." The Proclamation further decreed that no agent of the King purchase any of the lands not draining into the Atlantic Ocean, "until Our further Pleasure be known."

The *Constitution Act* of 1982 which "patriated" Canada's constitution affirmed existing of aboriginal rights, but did not define them. Since then, a series of aboriginal-federal-provincial meetings on the issue have taken place, but so far have failed to produce an agreement.

B. B.C. Land Claims and the Court

The settlement of land claims is a legal question as well as an important economic, social, and political issue.

The government of British Columbia has consistently maintained that if aboriginal title ever existed, it was extinguished in B.C. by ordinances of the colonial legislature affirming the colonies' control over the lands of British Columbia. Should a court rule that aboriginal title was not extinguished, the province holds that the responsibility for extinguishing Indian title falls to the federal government, under the terms of B.C.'s entry into confederation.

In the landmark Calder case in 1970, the Supreme Court of British Columbia rejected the historical and anthropological arguments put forward by the Nisga'a Tribe of the Nass Valley in a legal action seeking claim to a large area in northwestern B.C. The B.C. Appeal Court also rejected the application.

An appeal to the Supreme Court of Canada resulted in a split decision in 1973. Three justices ruled that there was still unextinguished aboriginal title. Another three held that there had been historical title, but that this aboriginal title had been extinguished long ago, as argued by the B.C. government. The seventh judge threw the whole issue into legal limbo, however, when he ruled against the Nisga'a band on a legal technicality.

Today, the question of the existence of aboriginal title remains unresolved. However, the more narrow question of an aboriginal right to fish as formerly has been resolved in favour of the Indians in the Appeal Court of B.C. A further appeal is pending before the Supreme Court of Canada.

C. Land Claims and the B.C. Forest Industry

Events of recent years demonstrate that the political and legal dimensions of land claims hold potentially serious consequences for the forest industry.

Disruption of forest industry operations has been used by Indians as a means of drawing attention to their claims. Forest companies engaged in licensed, legal logging activities have found themselves in the middle of the emotional public debate and complex legal issues surrounding native land claims. The result has been costly disruption of logging plans, the need for companies to assert timber harvesting rights through court action, and uncertainty about the security of long-term tenure and access by the forest industry to Crown forest land in the province.

II. The Federal Government Position

Since 1973 the Government of Canada has been attempting to resolve two broad categories of Native claims—"specific" claims and "comprehensive" claims—through a process of direct negotiations with the Native groups involved.

A. Specific Claims

"Specific" claims result from Native grievances relating to the administration of reserve lands and other assets under the *Indian Act*, or with respect to other formal agreements. In British Columbia most (but not all) of the specific claims result from disputes over what are known as "cut-off" lands.

A federal-provincial agreement in 1912 (the McKenna-McBride Agreement) established a Royal Commission to investigate the size and location of Indian reserves in B.C. Following the Commission's report in 1916, provincial and federal legislation (enacted in 1919 and 1920 respectively) removed or "cut-off" land from 34 reserves belonging to 22 Indian bands, without the consent of the bands affected even though the governments promised consent would be obtained. Negotiations began in the mid-1970s on settlement of these claims for compensation or restoration of lands. Many of the claims have now been resolved.

B. Comprehensive Claims

The second category, "comprehensive" claims, are those which give rise to questions of ownership and control of B.C. lands. Comprehensive claims embrace the concept of aboriginal title, which is linked to the traditional use (for hunting, trapping, fishing, etc.) and occupancy, and to the unique relationship with the land which Indians avow has existed since time immemorial.

British colonial policy towards Indians, finding its best known expression in the Royal Proclamation of 1763, assumed that Native people had an aboriginal interest in the land which had to be dealt with before non-Native settlement could take place. This policy, also adopted by the Government of Canada following Confederation in 1867, resulted in a series of formal agreements or treaties dating from the 1870s, whereby Indian rights to land in Ontario, the Prairie provinces, the Mackenzie Valley and the northeastern area of British Columbia were relinquished in return for certain benefits, including: land (reserves), cash, annuities, schools, medicine, and hunting, fishing and trapping privileges within the area ceded to the Crown.

By the 1920s, likely areas of settlement or development had been covered by the treaties in most regions of Canada but in British Columbia the provincial government consistently denied the existence of any aboriginal interest. Although little attention was given to completing formal arrangements, Indians in British Columbia and elsewhere continued over the years to press for settlement through claims submissions, court action and political lobbying.

In early 1973, the aboriginal title issue was brought sharply into focus by the Supreme Court of Canada decision in the Calder case, involving a land claim by the Nisga'a peoples (discussed earlier).

The re-examination of federal policy in 1973 resulted in a declaration outlining the willingness of the federal government to negotiate settlements with Native groups in those areas of Canada where Native title based on traditional use and occupancy of the land had not been extinguished by treaty, or superseded by law.

After establishment of the new federal comprehensive claims policy in 1973, settlements were eventually concluded with the Cree and Inuit (1975) and Naskapi (1978) of Northern Quebec, formally ratified in both provincial and federal legislation in what became known as the James Bay and Northern Quebec Agreement.

Progress in the settlement of comprehensive claims in other areas of Canada during the 1970's was far less conclusive. Third party concerns (including those of provincial and territorial governments and industry) as well as overlapping and competing claims, the mixing of political and constitutional issues with compensation claims, and a series of revisions in the position of native claimants—all combined to seriously inhibit any significant movement toward settlement of comprehensive claims.

C. Federal Land Claims Policy

The most recent full-scale review of federal claims policy was ordered by then-minister, David Crombie, in 1985, and took place under the auspices of the Federal Task Force to Review Comprehensive Claims Policy, chaired by Murray Coolican, a Halifax consultant. Its report—title *Living Treaties: Lasting Agreements*—was made public in March 1986.

Known as the "Coolican report", the federal review called for sweeping changes to federal native claims policy, and won support from Native groups for its recommendations in support of land claim settlements which would include monetary compensation, land, and sea resources, and which would not require Indians to surrender or extinguish their rights or title. As well, it called for Native participation in decision-making and management of land within their "traditional areas", and for self-government for aboriginal peoples.

The existing federal Comprehensive Land Claims Policy was summarized in a booklet published in 1987 by the then minister for Indian Affairs, Bill McKnight. It requires that the negotiation process and settlement agreement be fair and thorough. Under the policy, settlement benefits and rights may include lands, limited subsurface rights (minerals, petroleum resources, natural gas, etc.), wildlife and fisheries rights, resource revenue-sharing, environmental management, offshore areas and monetary compensation.

The federal policy provides that the rights and interest of non-Native peoples in a claim area must be dealt with equitably in any question of land settlement.

Settlements must clearly define the terms on which Native people have access to wildlife resources, with sound conservation practices and public safety measures to apply. Monetary compensation can take several forms, but the amount negotiated must be specific and finite.

Those who benefit from the settlements must be Canadian citizens of aboriginal descent from the claimed area, as defined by mutually-agreed criteria. These criteria may include such conditions as: percentage of Native blood, persons adopted by Natives according to traditional customs, and where cases merit, people who are considered Native by a determination of a majority of the Native community. In short, conditions for eligibility are negotiable.

The federal policy in effect from 1973 to 1987 which required that all aboriginal rights and title be extinguished as part of a claims settlement provoked strong reaction from Native groups. On this issue, the federal government modified its position in 1987, and has now stated that alternatives to extinguishment may be considered, provided that certainty can be established with respect to land and resource ownership.

None of the settlement criteria has been adopted by the Government of British Columbia.

D. How the Federal Government Negotiates Claims

The Office of Native Claims (ONC) was established in 1974 within the Department of Indian Affairs and Northern Development (DIAND) to deal with the increasing number of Native claims. It reviews claims that have been formally submitted to the department to identify and analyze the legal, historical, and factual elements relating to the claims. It also co-ordinates the federal government response.

Following analysis by the ONC and the Department of Justice, the federal government decides whether or not a claim can be sufficiently justified to proceed to negotiation. In B.C., there are currently 19 comprehensive claims that have been accepted by the federal government for negotiation; three more are being actively reviewed, and a further eight claims are anticipated by the ONC. Only one claim, submitted by the Musqueam Band in 1977, has been rejected. The Musqueam have since revised the claim and resubmitted it.

Of the 19 accepted claims, only one is being actively negotiated: the Nisga'a claim, where regular discussions have been going on for 13 years between the federal government and the Nisga'a band. The B.C. government has not formally agreed to negotiate, but has sent observers to the meetings.

Presumably any negotiations for land or for other provincially-controlled resources which are part of a comprehensive claim would be subject to participation by the provincial government, since the province exercises constitutional jurisdiction over such resources. However, the federal government has never made a formal proposal to British Columbia with respect to its role in negotiations and settlement.

E. Native Self-government

Under federal policy, one of the mutual goals of comprehensive land claims settlements is to give the Indian beneficiaries control over their own affairs.

The current policy allows for Indian self-government on a local basis to be negotiated as part of the land claim settlement agreement, or for established communities on reserve lands. This is in keeping with the principle that local affairs are best administered at the local level, with local control and responsibility.

Generally, this approach to native self-government means implementation by Indian peoples of a form of administration with powers and responsibilities roughly equivalent to those of a municipality. The first federal legislation enabling Indian self-government was passed by the House of Commons in the mid 1980s, and the Sechelt band in B.C. was the first band to exercise this 'self-government' option on their existing reserves.

A broader, not clearly defined concept of area-based self-government has been discussed at four First Ministers' conferences (the last in March 1987) devoted to defining Native rights under the new Canadian Constitution. But, the negotiations among the Prime Minister, the ten provincial premiers, and national aboriginal leaders were inconclusive.

F. Settlement of Comprehensive Land Claims in Other Jurisdictions: Quebec and Alaska

Quebec

On the basis of the settlements reached at James Bay in Quebec, it would not be fair to say that Natives necessarily want ownership to all land within the boundaries of a specific claim. The Quebec experience shows that Native bands seek a share in the revenues generated by development in those areas, and a role in making decisions on how those lands are used and managed.

The James Bay settlement did involve the direct participation of the Quebec government, which agreed to some fundamental aspects of aboriginal rights to lands, in part because portions of the Northwest Territories had been ceded to the province, extending provincial jurisdiction to the shores of James Bay, Hudson Bay, and the northern seas.

Under the terms of the Quebec settlement, the total area of the claim was divided into three categories. The first category, 1.4 million hectares, was granted to Native ownership. This was mainly lands in and around Native communities. These 'Category 1' lands were held by corporate structures with the powers of municipalities (School Boards, Native units of the Quebec Provincial Police, etc.). Resource use by third parties would be undertaken only after agreement with the Indian governmental structure.

Category 2 lands, 6.5 million hectares in the southern region for Indians and 9.1 million hectares in the northern region for Inuit peoples, was set aside for the exclusive hunting and fishing activities of the Natives, while ownership remained with the Quebec provincial government. Resource use by third parties would be undertaken following agreement with the province, but Native authorities would be involved in the decision-making and approval process. The Natives would be compensated for any disruption of hunting or fishing caused by resource development.

Category 3 lands, the largest portion of the claims area, were retained as Quebec provincial lands. Third parties could use them in the usual way, subject to normal regulation by the province.

In addition to these lands, the Natives were to be paid $225 million over sixteen years.

Alaska

In December 1971 the U.S. Congress passed the Alaska Native Claims Settlement Act (ANCSA), which was a legislated settlement (as distinct from a negotiated or a court settlement) of Native claims in that state. The legislation established over 200 Native corporations in Native villages, in urban centres, or on a regional basis, and conveyed

16.2 million hectares of land to these new corporations. The land given to the Natives amounted to about 11 percent of the total land area of the state of Alaska.

The ANCSA provided for a cash settlement of about $1 billion, transferred over a 12 year period to the Native corporations. Each eligible Native received shares in the local corporation—shares which cannot be sold until 1991. Although ANCSA was intended to make the Natives self-sufficient, less than five years after it was introduced many of the Native corporations were suffering tremendous financial losses, placing some on the brink of bankruptcy. Others, particularly those whose land had valuable timber resources, have proven to be a financial success.

A large portion of the land for the settlement was taken out of the Tongas National Forest; consequently, about one-half of the annual timber harvest in Alaska is now from native-owned lands. One of the largest forest corporations in Alaska is run by members of the Haida nation. Because restrictions against log exports which apply to U.S. National Forests do not apply to Native land, a substantial volume of the harvest is exported in the form of raw logs.

While ANCSA extinguished existing aboriginal rights and claims, a later Act of Congress in 1980 (Alaska National Interest Lands Conservation Act) gave Alaska Natives continued opportunity for widespread use of public lands for traditional activities.

III. The Provincial Government Position

Historically, the government of British Columbia has never recognized Indian claims of aboriginal title to vast areas of B.C. The position of the B.C. government is predicated on two aspects of the land claims debate:

(1) the legal question of extinguishment of aboriginal title; and
(2) the practical question of how in modern society the claims could possibly be paid, even if they were justified.

A. Aboriginal Title Has Been Extinguished in B.C.

The long-standing position of the B.C. government that aboriginal title has been extinguished in B.C. is founded on events in colonial British Columbia more than a century ago. When the Colony of British Columbia joined Confederation in 1871, the terms of union were silent on the subject of aboriginal rights and Native title.

In late 1985, the Hon. Garde Gardom (then the provincial minister responsible for native issues) wrote: "the acts and ordinances of British colonial governments were considered to have extinguished Indian title." He argued that the omission of aboriginal rights from the Terms of Union could not have been an oversight because, at the same time, the national government had expressed recognition of Indian title as it related to parts of the Northwest Territories. As well, in 1871, the Government of Canada signed Treaty I which extinguished Indian title in the new province of Manitoba.

Furthermore, the Terms of Union with British Columbia clearly confirmed federal responsibility for Indians and lands reserved for Indians, and required the Province to make lands available as Indian reserves. This was done.

Mr. Gardom summarized:

> Since Confederation, all British Columbia governments have said that Indian claims and land requests based on the premise of unextinguished Indian title have no validity in law, and further that the Province has fulfilled its responsibilities with respect to the provision of Indian lands under its terms of union with Canada. This policy has reflected the position of the majority of B.C. voters since Confederation.

Indian leaders argue that neither the B.C. Colonial government nor subsequent provincial governments ever undertook specific action to conquer, expropriate, purchase, or agree to a treaty in order to extinguish aboriginal title. The B.C. government has countered that the very existence of colonial and provincial laws on Crown-owned lands has had the effect of extinguishing aboriginal title, implicitly if not explicitly.

Even if aboriginal title is found by the Courts to exist, the B.C. government believes the federal government has the sole responsibility to settle those claims, based on the terms of union under which B.C. entered confederation. By Article I of the Terms of Union, Canada accepted responsibility for and debts and obligations of the colony.

Although the B.C. government has refused to negotiate on the issue of comprehensive claims, dialogue and negotiations have commenced between the province and Native bands on a wide range of other issues. In early 1987, Premier Bill Vander Zalm created a new Cabinet Committee on Native Affairs to deal with issues such as cut-off lands, social welfare, health, education, and economic development. Currently, native issues are the responsibility of the Hon. Jack Weisgerber, M.L.A. for South Peace River.

B. Problems of Practicality and Cost to the Taxpayer

The second question with respect to comprehensive claims turns on the practicality of how today's society could pay Native claims, and meet all Native demands. In 1986, the late Nisga'a leader, James Gosnell, put the comprehensive claims issue in its starkest terms, avowing that the Natives' bargaining position was that they "own B.C. lock, stock, and barrel."

The government of British Columbia has rejected this approach, perceiving that comprehensive settlements would involve vast amounts of money, land, and resources to satisfy native demands—all at the expense of British Columbian and Canadian taxpayers.

The monumental practical problem in any question of using Crown land for settlement of claims is the massive commitment of land in B.C. to third party interests. Forest tenure is the most obvious example where Crown land has been encumbered for a purpose lawfully granted by the provincial government.

Other third party interests include mineral rights, water rights, highway rights-of-way, grazing licenses, and a host of others.

More general encumbrances on Crown land include the Agricultural Land Reserve, wildlife reserves, parks, wilderness areas, Crown leases, range leases, and many others.

The B.C. government recognizes that if public lands are made available for Indian land claim settlements, third party interests would either have to be shared or removed. Compensation would have to be paid to the holders of those interests, with governments responsible for paying. It is impossible to calculate the size of the bill, or to estimate the economic, social, and fiscal consequences that might be involved.

In summary, the provincial position in British Columbia today is one of rejection of comprehensive Native land claims. The province believes that Indian title is not recognized in law. Should aboriginal rights or title become recognized in law as a result of court action, responsibility for negotiating and settling claims rests with the federal government. The federal government would have to compensate British Columbia for any provincial contribution to settlement.

IV. Native Land Claims in B.C.: Federal/Provincial Stalemate

The federal government has accepted 19 comprehensive claims in B.C. under its own guidelines for negotiation, while publicly stating that negotiations cannot effectively proceed without the participation of the province. The specific details of the 19 accepted claims have reportedly been shared with the provincial government, but are not public knowledge. Only one of the 19 comprehensive claims (Nisga'a) is actively being discussed.

Because comprehensive Native claims in B.C. have never proceeded to formal negotiations involving the province, and because the federal government has released few details, the nature and extent of all the claims is difficult to document.

VI. *Implications of Land Claims/Aboriginal Rights for the B.C. Forest Industry*

The political and legal debate surrounding Indian land claims and aboriginal title in B.C. has already had serious consequences for the B.C. forest industry. Much of the Crown forest land in B.C. is encompassed by one or another Native land claim, and few companies would be immune from the potential impact of legal or political action undertaken to come to grips with this issue.

Since 1985, a growing number of companies in B.C. have faced disruption of logging operations, suspension of logging activities, the need to pursue costly litigation to protect harvesting rights, and growing uncertainty about the security of long-term tenure and access to Crown-owned timber.

The well-publicized controversies over land claims in the Skeena, on Meares Island, in the north, in the Stein Valley and elsewhere represent only a small fraction of provincial forest land included in aboriginal claims filed by Indian bands with the federal government. How the provincial and federal governments and the judicial system deal with these first claims is unquestionably of great importance; however they are resolved, these first cases (particularly the Gitksan case) will likely set a precedent for other areas.

Court decisions themselves will not result in the transfer of lands and/or resources to Indian claimants. The courts may determine, however, that the Indians have an unextinguished interest in the lands of British Columbia. At issue is the nature and extent of that interest. If it is found to exist, its effect may be to prohibit the provincial government from transferring unburdened interests in Crown land to third-party users. The provincial government would then be required to resolve the matter through negotiations with Indian claimants. These long-put off "land claim negotiations" could result in the transfer of certain rights and benefits to the Indians, including the transfer of lands, or interests in lands. The impact on resource users could fit one or more of the following scenarios:

- forest companies may be allowed to continue logging operations, in return for a share of the revenues being paid to the Indian land-owners and employment guarantees for band members;

- harvesting plans and cutting permits could require the approval of Natives with 'aboriginal rights' in the region;
- forest companies and Indian bands could enter into joint business ventures or partnership—a point often emphasized by DIAND officials who favour negotiation of the land claims;
- companies could continue operations until the expiry of their current tenure agreements, at which time native groups would assume control of the land and any capital assets;
- timber firms may have to engage in complex negotiations over compensation for revoked timber, while the two levels of government might have to consider compensation for forest industry employees, contractors, and other local businesses adversely affected by the withdrawal of forest land;
- forest tenures could be lost.

The impact on the provincial government could include reduced revenue from stumpage, taxes, and other fees, as well as potentially disruptive changes to the management of timber, fish and wildlife, range, water, and other resources.

By refusing to participate in negotiations with Indian claimants, the provincial government has opted for litigation. The courts, however, have shown in recent years that they are disposed towards interpretation in favour of the Indians' claims to the enjoyment of unextinguished aboriginal rights and/or title. Thus the Indians' position is being strengthened legally, if not politically.

Governments face the prospect of eventually being forced into negotiations with court-imposed determinations as guidelines. The choice of the provincial government is to agree to negotiations voluntarily, and have a free hand in shaping the process and outcome, or to continue to stall until the courts have made the determination that Indian title exists as a burden on the title of the Crown.

If Indian title is confirmed, it can be removed only by an explicit act of Parliament. That was, at least, thought to be the case prior to amendment of the Constitution in 1982 to affirm the existence of aboriginal rights and to give land claims settlements the status of treaties.

Some constitutional experts now believe Parliament is no longer capable of extinguishing aboriginal title without aboriginal agreement. Therefore, negotiations once again are contemplated. Inevitably, then, the Government of British Columbia will find itself required to enter into negotiations to resolve the question of the Indian interest in Crown lands.

Appendix

*Native Land Claims in British Columbia: A Chronology of Key Events to 1988**

1763	Royal Proclamation by George III of Britain with respect to Indians in North American colonies.
1849	Colony established on Vancouver Island. Hudson Bay Company promotes colonization.
1850–1854	James Douglas, Governor of the colony of Vancouver Island, enters into 14 treaties (settlements involving reserve lands, compensation, etc.) on Vancouver Island, with various Native bands. After 1854, no further treaties signed as a result of dispute over who would bear the cost of such settlements (the colony, the Imperial government, or Hudson's Bay Co.).
1858	Colony established on mainland B.C.
1871	B.C. joins Canada. Terms of Union provide that federal government will assume the "debts and liabilities of B.C. existing at time of union." Article 13 establishes federal responsibility for Indians and Indian lands. Provision made for completion of reserve system in B.C.
1875	Dominion government disallows B.C. Crown Lands Act on basis that cessation of aboriginal title had not been obtained. After amendments relating to reserves, a second act allowed to come into force.
1875	"Papers Connected with the Indian Land Question" published in Victoria.
1876	Governor General the Earl of Dufferin makes speech in Victoria citing the "error" of B.C. government in not recognizing Indian title.
1876	Joint federal/provincial commission set up to delineate Indian reserves.
1899	Treaty 8 signed by federal government and Indians in the Peace River area of northeastern B.C.
1909–1910	Indians make application to King Edward VII to have Privy Council determine aboriginal title. Request denied.

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* This chronology was prepared based on material from Sam Stevens (Director of Native Law Program, U.B.C. Faculty of Law); from DIAND; and from COFI research.

1910	In Prince Rupert, Prime Minister Wilfred Laurier promises to help Indians have aboriginal title adjudicated by Judicial Council of Privy Council.
1912	B.C. Royal Commission on Indian Affairs (McKenna-McBride Commission) established to examine reserves in B.C.
1916–1920	McKenna-McBride Commission recommends creation of reserve system in B.C. Under newly enacted federal and provincial statutes, governments were allowed to appoint commissioners to determine boundaries and make land adjustments. Some land "cut off" from B.C. reserves.
	Indians appear before commission and reject recommendations on ground that aboriginal title not dealt with, that Indians were not part of the process, and over objections to the size and location of reserves.
1915–1916	Allied Tribes of B.C. formed, the first pan-tribal organization in B.C.
1924	R.B. Bennett, acting federal Justice minister, promises to resolve the B.C. Indian issue. Conservatives defeated in following election.
1927	Special Joint Committee of Senate and House of Commons struck to hear claims of the Allied Tribes of B.C. Committee said aboriginal rights and title not proven, and recommended that future land claims activity be barred. Parliament amends Indian Act to make it an offense to collect funds for the purpose of advancing claims.
1938	B.C. completes Indian reserve arrangements by Order in Council, and transfers most provincial land within Indian reserves to federal government.
1946–1947	Joint Senate/House committee holds hearings on the Indian Act, recommends establishment of an Indian Claims Commission to deal with Indian treaty claims.
1951	1927 Indian Act amendment barring pursuit of land claims removed (see above).
1959–1961	B.C. Indian leaders testify before Special Joint Committee of Senate and House of Commons on Indian Affairs. Committee report in 1961 recommends Indian Land Claims Commission to deal with B.C. claims.

1963	Diefenbaker government introduces Indian Claims Commission bill. Never enacted.
1965	Pearson government introduces Indian Claims Commission bill. Never enacted.
1965	Supreme Court of Canada decides in Regina V. White and Bob that Indian hunting rights protected in Nanaimo treaty of 1854 against provincial laws. Federal Indian Affairs minister Arthur Laing indicates willingness to open negotiations to conclude treaty in B.C., asking for one group representing at least 75 percent of Indians in the province to conduct negotiations. Indian attempts to form province-wide organization fail after Nisga'a Tribal Council decide to proceed on their own with court case.
1969	Federal "white paper" on Indian policy rejects aboriginal claims. Native opposition in B.C. to the white paper leads to formation of Union of B.C. Indian Chiefs. Nisga'a case begins in Vancouver (Calder V. Attorney General of B.C.).
1970	After Indian protests, Prime Minister Trudeau withdraws white paper.
1973	Supreme Court of Northwest Territories in Paullette case makes ruling on aboriginal rights affecting land. Decision overturned by Supreme Court of Canada on technical grounds.
	Quebec Superior Court issues interim injunction halting James Bay Hydro-electric development on basis of unextinguished Indian rights to land. Injunction immediately lifted by Appeal Court, but dispute resolved by a negotiated settlement in 1975.
	Federal government issues statement on land claims, indicating policy of negotiating settlements in non-treaty areas, including B.C.
	Split decision by Supreme Court of Canada in Nisga'a case. Federal government introduces new comprehensive claims policy.
	Federal government agrees to open negotiations to settle aboriginal title claims of Yukon Indians.
1974	B.C. NDP Human Resources Minister Norm Levi rejects

	provincial involvement in land claims, asserting that the issue is a federal responsibility. Asks federal government how B.C. will be compensated for any land transferred to Indians as part of settlement.
1976	Allan Williams, new Social Credit minister responsible for Native affairs, meets with federal and Nisga'a representatives. B.C. agrees to "discussions" but maintains only 'observer' status to negotiations between federal government and Nisga'a.
1978–1982	Focus of Native political activity on patriation of Canadian Constitution and native rights entrenchment.
1981	Federal government restates its 1973 policy on comprehensive claims in a booklet titled "In All Fairness".
1982	Canada's Constitution Act Section 35(1) recognizes existing aboriginal rights and provides a mechanism for determining and defining those rights.
1983	House of Commons Special Committee releases report on "Indian Self Government in Canada."
1984	Federal government and Inuit of the Mackenzie Delta sign a final agreement settling aboriginal title claims.
	Chief Justice Dickson of the Supreme Court of Canada, in a ruling involving a trust action against DIAND (Guerin V. The Queen) cites the Calder (Nisga'a) case of 1973, stating that the Court had "recognized aboriginal title as a legal right derived from the Indians' historic occupation and possession of their tribal lands."
1985	B.C. Court of Appeal upholds interim injunction against logging on Meares Island (MacMillan Bloedel V. Mullin 1985) on the basis of unresolved Native claims to aboriginal title to the island.
	B.C. Court of Appeal upholds another interim injunction on basis of Indian claims to riparian and fishing rights, by halting plans for twin-tracking in the Fraser Canyon and Thompson Valley (Pasco v. CNR).
1986	Federal government issues the report of the Federal Task Force to Review Comprehensive Land Claims, title "Living Treaties: Lasting Agreements" (the Coolican report). Report recommends sweeping changes to claims policy in

order to achieve settlements, and gains support from Native groups.

Kwakiutl band wins injunction to stop logging of privately-owned Deer Island until its aboriginal rights case is heard in B.C. Supreme Court.

1987 Federal government issues booklet titled "Comprehensive Land Claims Policy" which modifies federal policy by allowing federal officials to consider specific options or alternatives in a claims settlement which do not formally extinguish aboriginal title. In the past, full extinguishment was a precondition for any settlement.

Chief Justice of B.C. Supreme Court begins hearing Gitksan case, first in Smithers, later in Vancouver. Testimony from Native elders on how Natives view origins, nature, and extent of aboriginal rights.

1988 January: Gitksan case resumes in Vancouver.

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"Our lands are the basis of our existence as distinct peoples. Rather than trying to make nature over, we seek to learn from it, to share in its spirituality, to attune our lives to the seasons and to the hills, valleys, and streams that cross the land."

—From the video, *The Balance to be Kept*, with permission from the Office of the Hereditary Chiefs of the Gitksan and Wet'suwet'en People

REACHING JUST SETTLEMENTS

LAND CLAIMS IN BRITISH COLUMBIA

A Public Discussion of a Pressing Issue

There is a need in the Province of British Columbia for just settlements in relation to the aboriginal land question. Many interests in the key sectors of the economy argue that there is too much uncertainty and unpredictability. Whether it is in the courts, in direct action, or at the negotiating table, aboriginal peoples are pressing for recognition and fairness. Good portions of the public also want settlements and, slowly, governments are moving in that direction.

The papers in this timely and important volume represent the views of aboriginal, business, labour, municipal, and academic leaders on the need for and possible shape of just settlements. They will help readers establish the facts, identify the issues, and illuminate the past developments and the potential common ground that will form the basis for just settlements in the near future.

Cover photo courtesy of the Royal British Columbia Museum, Victoria, B.C. Photo #PN 4533

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